AVIATION PRODUCT LIABILITY: THE EFFECT ON TECHNOLOGY APPLICATION

WITHDRAWN

HEARING

BEFORE THE

SUBCOMMITTEE ON
TRANSPORTATION, AVIATION, AND MATERIALS

OF THE

COMMITTEE ON
SCIENCE AND TECHNOLOGY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

OCTOBER 22, 1985

[No. 55]

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CONTENTS

WITNESSES

October 22, 1985:

Page
- Milton Copulos, The Heritage Foundation, Washington, DC 4
- Clifton Von Kann, president, National Aeronautic Association, Washington, DC 14
- Malcolm T. Stamper, vice chairman, The Boeing Co., representing the Aerospace Industries Association 30
- John V. Brennan, president, United States Aircraft Insurance Group, Washington, DC 45
- Edward W. Stimpson, president, General Aviation Manufacturers Association, Washington, DC 56
- Robert Martin, director, Beech Aircraft Corp., Wichita, KS, and senior partner, Martin Pringle, Oliver, Wallace & Swartz 60
- Charles B. Husick, senior vice president, Fairchild Industries, Germantown, MD 69
- Frederick B. Sontag, president, Unison Industries, Inc., Rockford, IL 75
- John S. Yodice, general counsel, Aircraft Owners and Pilots Association, Frederick, MD 88
- Henry M. Ogrodzinski, director of corporate communication, Experimental Aircraft Association, Oshkosh, WI 92

APPENDIX

- Statement of Mr. Jim Burnett, chairman, National Transportation Safety Board 112
- Statement of Mr. John H. Winant, president, National Business Aircraft Association, Inc 115
- Statement of Mr. William J. Burhop, senior vice president, Government Affairs, Air Transport Association of America 117

AVIATION PRODUCT LIABILITY: THE EFFECT ON TECHNOLOGY APPLICATION

TUESDAY, OCTOBER 22, 1985

House of Representatives, Committee on Science and Technology, Subcommittee on Transportation, Aviation and Materials,

Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2325, Rayburn House Office Building.

Mr. Brown. The subcommittee will come to order.

Today the subcommittee will focus on the question of product liability as it affects the aviation industry.

It's difficult to overstress the importance of this subject, particularly among aviation manufacturers. Because of newly expanded theories of liability and huge judgments awarded by the courts in recent years, the aviation industry is experiencing marked increases in its insurance premiums and even an inability of the market to provide coverage for certain categories of risk. Furthermore, we understand the threat of product liability litigation may be inhibiting the incorporation of new technology and the conduct of research and development.

Our purpose today is limited. We plan only to raise the level of awareness of these problems, to elicit the facts and to understand the issues.

We do not plan to discuss possible solutions in any detail at this time. That will be a subject of future hearings, possibly next year in connection with draft legislation.

For this hearing, we have assembled a group of experts from the major industry segments affected by concerns about product liability. With their help, I'm confident we will be able to examine the problem and its important dimensions.

Before I recognize Mr. Lewis, our ranking minority member, I'd like to recognize Mr. Glickman, who served as chairman of this subcommittee for a considerable period of time and was largely responsible for arranging this hearing. And I think it would be appropriate to ask him to make some comments at this time.

Mr. Glickman. Thank you, Mr. Chairman.

I appreciate the fact that you have called this hearing today with the purpose of looking at the aviation industry and at product liability issues, and focusing how they really relate to the ability of the industry to engage in new technology development. Whether product liability and the insurance rates caused by that liability make it impossible to modernize and make us competitive with the rest of the world because of the costs associated thereby, whether product liability and all the legal issues in connection therewith make it so that airplane manufacturers and users are less prone to experiment with new technologies for fear of major lawsuits and, therefore, we can't advance in a competitive sense with respect to competitors in the rest of the world—these are issues that I would hope could be addressed by the witnesses today.

This committee does not have jurisdiction over the basic underlying issue of product liability. That is probably shared by the Commerce Committee—Energy and Commerce Committee—and the Judiciary Committee on which I serve, and I do happen to chair a subcommittee on Judiciary which has at least some jurisdiction over the areas of product liability legislation. And from a personal point of view, I think this Congress needs to seriously explore legislative solutions to product liability, and hopefully that will be able to be done next year.

But I'm glad that we have these hearings because these hearings will focus on what are the technical—technological implications of the current condition of product liability litigation in insurance-related issues in this country. Do they make it very difficult for us or are they a part of the problem that make it difficult for us to expand our technology and develop new products?

Thank you, Mr. Chairman.

Mr. Brown. Thank you, Mr. Glickman.

Now Mr. Lewis?

Mr. Lewis. Thank you, Mr. Chairman.

The importance of the issue that we will be addressing here this morning cannot be overstated. The growing tendency in this country to sue whenever something goes wrong is having an extremely damaging effect on the way we do business. It is becoming increasingly common for Americans to demand a totally risk-free environment, while assuming no responsibility for their actions. This is particularly true in the matter of flying.

No mode of travel is without some risk, and there is no denying that flying is inherently more dangerous than most other modes of travel. Yet, in spite of this, a person is far safer when he entrusts his life to a professional pilot flying for a commercial airline than when he gets behind the wheel of his own car. The aviation industry must be doing something right.

General aviation, particularly for private pilots, has not been able to claim this same exemplary safety record. Private pilots often lack the proficiency required, and at times push their own capability or that of their aircraft beyond safe limits.

When this happens, all too often they or their survivors want to be compensated for their loss. They then go after the deepest pocket, usually the manufacturer, irrespective of who was at fault. If these costs can be spread out, and the general aviation consumer is willing to pay the continually higher and higher prices for aircraft, this isn't a problem. However, they are not, and the manufacturers' pockets are not as deep as some might think. The general aviation industry is fighting for its survival, and I am afraid it is going to lose that fight if some action isn't taken soon.

The spiraling costs of product liability, including insurance and legal fees now estimated by one manufacturer to average $70,000 per aircraft sold, is already driving manufacturers to drop their lower priced product lines. If the trends to more and more litigation and ever-increasing settlements continue, we will soon be without any small aircraft.

Obviously something has to be done, but what? Certainly we don't want to deny the legitimate victim of criminal negligence his day in court. But when we see manufacturers held liable without regard for the actions of the plaintiff, when they can be successfully sued even when there was gross negligence on the part of the pilot or owner of the aircraft, even when the aircraft was improperly maintained or serviced, and even when the aircraft was altered against the advice of the manufacturer, then clearly the time has come to say, "Enough is enough."

For the many thousands of responsible pilots and owners who are finding it increasingly difficult to stay involved in aviation, and for the thousands more who have already found it unaffordable, we have to do something to reform this crazy tort system.

The system we have today benefits no one but the trial attorneys. It certainly isn't helping the victims when plaintiffs only get about one-third of the liability settlements and the attorneys are getting nearly two-thirds.

However, of even greater concern to me than those who get what, are the hidden costs of the present tort system. A system which allows knowledge gained in the future to be used in judging something manufactured today certainly doesn't encourage innovation. And manufacturers certainly aren't encouraged to improve their products, if this can be used against them as evidence that their product was defective.

When the tort system acts to inhibit the development or implementation of new technology, we are paying a very high price indeed, and we need to take a serious look at what can be done to rectify this.

I want to commend you, Mr. Chairman, and also Mr. Glickman, who started this hearing, for holding this hearing today. Focusing our attention on the problem is the first step to finding a solution, and the witnesses assembled here this morning are well qualified to address this issue.

Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mr. Lewis.

I note the presence of several cameras and, without objection, permission will be granted to film the proceedings this morning or for still photography.

I'm very fortunate as chairman of this committee in having a subcommittee on which all the members are much more knowledgeable than I am about this subject, and probably most other subjects. So let me ask if Mr. Boehlert or Mr. Packard have anything to say.

Mr. BOEHLERT. You're much too modest, Mr. Chairman. I have no opening statement.

Mr. BROWN. All right. Our first witness this morning is Mr. Milton Copulos, of the Heritage Foundation, and we welcome him here this morning. And we'll ask both him and General von Kann to make their statements, and then we'll question them as a panel.

Would you proceed, please?

STATEMENT OF MILTON COPULOS, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. COPULOS. Yes, Mr. Chairman.

Yes, Mr. Chairman, I'd like to thank you for the opportunity—I'd like to thank the committee for this opportunity to testify and, as I explained to the chairman previously, I ask his indulgence. I've just been released from the hospital after major surgery and I will have copies of my prepared statement available this afternoon. I couldn't get it to a typist in time.

Mr. Chairman, the American economy is in the midst of a crisis, a crisis which threatens to destroy millions of jobs, jeopardize the Nation's security, and undermine a standard of living that's become the envy of the world.

It's a crisis and a threat which is not caused by some foreign cabal or cartel or some boardroom manipulations of multinationals. Its roots are in a very simple and plain thing—greed. It's a crisis in product liability and other liability litigation.

I think a couple of brief examples might illustrate just how this generic problem affects everyone, not just general aviation, and just how ludricous the situation has become.

Item: A man sticks his 2-year-old son's head between the rotating blades of the ceiling fan and then sues the manufacturer for failing to have a warning label against such action.

Item: Two men place a hot air balloon in a commercial dryer in Maryland and, because it explodes when the hot air causes the balloon to expand, they sue the manufacturer and collect damages.

Item: The crank shaft in the motor of an aircraft that's older than the pilot flying it finally gives up the ghost, and they sue the manufacturer because of engine failure, even though it's 40 years old.

I can go on and on and on with these sorts of stories, but, as the members—some of the members have already noted, unfortunately, were replete with them to date. Time and time again we're seeing people suing for no reason other than there seems to be a deep pocket, and people are unwilling to take responsibility for their own actions.

Nowhere is this more evident than the area of general aviation. Despite a safety record which is the finest of almost any industry—as noted, you're safer behind controls of an aircraft than you are behind the wheels of an automobile—despite very, very careful regulation by the Federal Aviation Administration, despite all these things we do to try and make aviation as safe as is humanly possible, we find the cost of product liability premium—insurance premiums skyrocketing to the point that they threaten not only to greatly increase the expense of general aviation, but to simply make it unavailable to many people.

It is not unusual today to see premiums of $50,000 to $70,000 per aircraft. That's an enormous sum of money when one considers what the costs of the aircraft themselves are. Premiums have actually increased anywhere from 2,000 to 3,000 percent in some instances.

Moreover, it's coming at perhaps the worst possible time for the general aviation industry in this country. After their peak sales of over 14,000 units in 1978, we've seen general aviation decline to the point where they sold just 1,600 units last year. Similarly, in the area of foreign sales, they've plummeted to 10 percent of what they were in 1980.

Granted, economics—the strong dollar, many other factors—contribute, but product liability may just be the single straw that breaks the camel's back.

Obviously, no one wants to hold harmless the negligent manufacturer, the charlatan, the person who does shoddy work, but people must begin to take on some responsibility for their own actions, and there must be some point at which a manufacturer is held harmless for things that happen to the equipment they make. There is a limited life span of these things.

While you may not realize it, today if a man who is an antique car collector were to take a painstakingly restored 1905 Ford model T or model A out which had been put back in the original condition, meaning it had plate glass and mechanical brakes, and if that individual, because mechanical brakes sometimes fail when they get wet, were out in a bit of a rainstorm, were to have an accident, and then be cut by the plate glass which shattered when he hit a tree, he would have a prima facie cause of action against Ford Motor Co., and the fact—in some States the fact that safety glass and improved brakes now exist would be seen as a sign that Ford produced a defective product even though the product is 80 years old, and those things didn't even exist when they were made.

As a consequence—and this is happening in more and more areas of manufacture—as a consequence, what we see happening are two things:

First of all, manufacturers are beginning to hold back on possible safety improvements. They are afraid to put them in. And, second, they're moving overseas. We must not lose sight of the fact that product liability is more than just an issue of insurance and of economics for companies; it's a matter of jobs. We may soon lose whole industries in this country just because of the tort system that's run out of control.

Now there are a few simple things we can look at that might help this, one of which is called a statute of repose. There should be some point in time after which the expressed warranty of a product expires. One should not be held eternally liable for a product. If someone manufactures something which has an expected life of, say, 30 years, is it really fair if they make it so well that it lasts 60 to have that additional useful life create a liability for them? I don't think anyone would believe that makes sense.

Another thing we need to do is take a look at contributory negligence. To what extent does someone actually contribute to the problem that they have? If I, for example knowing full well that something I'm going to do might increase the risk I'm taking in a given action, I should have some share of the responsibility if that risk results in a damage of some kind.

And, finally, we need to have a system under which the economic penalties which are imposed bear some resemblance to the economic costs that are incurred. There was one very celebrated case in which a $5,000 damage award was made for actual damages and $10,500,000 were awarded in punitive damages. That simply makes no sense. Either the economic damages were grossly understated or the punitive damages were grossly overstated. But in either case, those sorts of awards, which very often are not overturned on appeal because appellate courts are hesitant to overturn jury awards, simply should not take place.

Now I can't say I have all the answers, but I think some of these things I cited might be helpful, and I would be happy afterward to answer any questions the members might have.

[The prepared statement of Mr. Copulos follows:]

TESTIMONY OF

MILTON R. COPULOS SENIOR ANALYST

THE HERITAGE FOUNDATION

BEFORE

SUBCOMMITTEE ON TRANSPORTATION, AVIATION AND MATERIALS

COMMITTEE ON SCIENCE AND TECHNOLOGY

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 22, 1985

The American economy is in the midst of a crisis--a crisis which threatens to destroy millions of jobs, jeapordize the nation's security, and undermine a standard of living that is envied the world over. Worse, this threat is not the product of some inimical foreign cartel, or the boardroom manipulations of some huge multinational corporation. Rather, it is the product of pure and simple greed--greed fed by a tort law system that is out of control. A few items illustrate just how outrageous the situation has become.

--A man sticks his two-year old son's head between the rotating blades of a ceiling fan, and then, when his son is injured, sues the fan's manufacturer for damages claiming that the product was defective because it did not carry a warning lable cautioning users against such action.

--Two men try to dry a hot air balloon in a commercial dryer, and when the machine explodes as a result of the balloon's expansion, sue the manufacturer for failing to warn against the use of their dryer for this purpose.

--A young boy injures his fingers while trying to kill his pet parakeet with a mousetrap. His parents then sue the manufacturer for damages again claiming that the manufacturer's failure to warn against the danger of using their device for such a purpose was an inherent defect .

--The original crankshaft in an aircraft that is older than the pilot flying it finally fails, and firm which manufactured the engine is sued, even though its expected useful life had never been intended to extend beyond a decade.

In each of these cases, no unbiased observer would have found fault with the manufacturer of the product involved, and yet in these and thousands of others, manufacturers must defend themselves against lawsuits brought by people who see them as a " deep pocket ".

As a consequence, more and more companies are finding themselves faced with the unpleasant task of choosing between settling an obviously specious lawsuit, or paying enormous legal fees to defend themselves against meritless charges. Worse, more and more insurance companies are dropping out of the product liability field entirely. For the consumer, this means that not only are prices rising as a consequence of skyrocketing product liability insurance premiums, but in some cases products are simply becoming unavailable due to an inability to find anyone willing to insure the product at any price. No where is the effect of the crisis in product liability more evident than in regard to general aviation.

Despite a safety record that is above reproach, the cost of product liability insurance for small planes is literally threatening the existence of the general aviation industry in the U.S. Today, the cost of premiums for the product liability on a single aircraft can range between $50,000 and $70,000. In some cases, manufacturers of small planes have seen their annual premiums rise by as much as 2000 or 3000 percent. Moreover, as noted, in some cases, they cannot obtain insurance at any price. With each passing day, the pool of available insurance capital shrinks, and the crisis grows progressively worse. Clearly something must be done. But, if some action is not taken soon, it may be too late for America's general aviation industry.

Even without the burden of excessive product liability premiums, general aviation was in trouble in the U.S. Domestic sales of small planes have fallen from their peak year of 1978, when more than 14,000 units were sold, to sales of only about 1,600 aircraft last year. Similarly, overseas sales have plummeted as well, falling to less than 10 percent of what they were in 1980.

Granted, there are a wide range of economic forces that have assaulted the U.S. general aviation industry, but the huge costs associated with product liability protection have done little to enhance the marketability of small planes.

Obviously, no one wants to hold harmless the negligent or shoddy manufacturer, especially in an inherently risky area such as aviation. We want to have the safest planes possible, and in fact, that is what the U.S. industry has been producing. You are actually safer in an airplane than you are behind the wheel of your own car. Yet, the insanity which prevails in our tort law system seems to have turned all notions of responsibility and negligence upside down.What then can be done to correct the current atmosphere of legal terrorism?

First, there must be a restoration of the requirement that a tangible linkage exist between an alleged injury and the award of damages. This notion of linkage--the finding of fault if you will--has steadily eroded over time. As a consequence, it is rapidly becoming the case that any claim, no matter how specious can be brought into a court of law, and even where the case has no merit, cause a product's manufacturer to incur hundreds of thousands or even millions of dollars in legal fees to defend itself against a suit which never should have been brought. Returning to some form of a negligence-based standard would help to reduce the number of such lawsuits dramatically.

A second concept which might help relieve the current crunch, would be the creation of a statute of repose, i.e. a time limit after which a product's manufacturer could no longer be held liable for accidents resulting from that product's use. What such a statute does is to protect the manufacturer from liability for long-outdated items it may have once manufactured but which have lasted longer than their manufacturers had anticipated or intended. This prevents firms from being penalized for producing products that are too good.

Also, the concept of contributory negligence must be re-introduced into law. In far too many cases, a product that has been significantly modified by its owner, without the knowledge or approval of the manufacturer fails, and the manufacturer is still held liable. Under this rationale, if an antique car collector lovingly restored a 1905 Model T to its original condition, meaning that it had mechanical brakes, and windows that were not safety glass, Ford could be held liable in some states for damages caused if the brakes failed, and the driver or a passenger were injured by shattering glass, even though both of these items have long since been abandoned by the automobile industry. In fact, the existence of safety glass, and improved brakes might actually be used as evidence in court to prove that the car was defective, even though it was eighty years old. The same analogy holds true for aircraft that have long outlived their anticipated useful life.

Still, one might argue that since flying is inherently risky, manufacturers should be held to a higher standard. While there is merit to this argument, it should be noted that aircraft manufacturers are already held to a far higher standard of safety than the producers of more mundane machinery. The Federal Aviation Administration inspects and approves all aircraft designs, certifies their airworthiness, and regulates and inspects their maintenance. Moreover, the manufacturers themselves have an enormous incentive to produce the best product possible: no one will buy a plane that falls out of the sky regularly. So, there is consideration to the special safety concerns related to flying, and the federal government already plays an active role in addressing those concerns. What must be done as well, however, is to ensure that the pursuit of safety takes place in a manner which not only is equitable for the consumer, but for the manufacturer as well. In all too many cases, the notion of assuring equity for producers is ignored by attorneys who see them as nothing more than a deep pocket for their clients--an attractive target for suits not because of any real or imagined culpability, but rather, to paraphrase Sir Edmund Hillary, " Because they are there."

The real solution to the problem, of course, is a sweeping reform of the tort law system in the United States. Until such reform is accomplished, however, there are some positive steps which can be taken. First, as noted would be the establishment of a statute of repose. This would eliminate the specter of perpetual liability for products that have long outlived their anticipated useful lives. A second point would be to require that damage awards bear some relationship to actual economic loss. In one celebrated case, a jury awarded the family of a deceased victim $5,000 in actual damages, and $10,500,000 in punative damages. Flearly, one of the two awards was grossly out of proportion.

A third element which could help alleviate the current crisis would be the re-introduction of the concept of contributory negligence. If an individual takes an action which increases the risk associated with a product then the individual's role in helping to cause his own, or someone else's injury should be taken into consideration. While this may seem straightforward enough on the surface, in all too many states, the concept of contributory negligence is given virtually no consideration in awarding damages.

A fourth area which is of particular importance is that the introduction of new or improved safety devices or equipment should not be admissable in court as evidence of an inherent defect in an earlier version of a product. Currently, in many states, safety improvements can be admitted as evidence against a manufacturer, creating a powerful incentive not to make such improvements in order to avoid the prospect of litigation.

A final point which should be made is that among all the areas of product liability law, aviation is among the most well suited for federal action. The

Commerce Clause of the Constitution arose largely out of concerns over the interstate transportation of goods, and virtually all general aviation involves interstate travel. Therefore, it represents exactly the sort of situation envisioned by the founding fathers as an appropriate area for federal intervention. The interstate transportation of goods is an essential element of the U.S. economy, and general aviation plays an important role in that transportation. Steps must be taken, and taken soon, if this vital industry is to remain a part of the American economy. If they are not, it will soon fall victim to a tort law system out of control.

Mr. Brown. Thank you very much, Mr. Copulos.

General von Kann, would you proceed with your statement? And the full text of your statement will appear in the record, if you desire to abbreviate it in any way.

STATEMENT OF CLIFTON VON KANN, PRESIDENT, NATIONAL AERONAUTIC ASSOCIATION, WASHINGTON, DC

Mr. von Kann. Thank you, Mr. Chairman.

Yes, I will abbreviate the statement and simply make some remarks and occasionally read a couple of paragraphs from it.

I might point out that I come here in a—with—in a two-hat role: As president of the National Aeronautic Association, I'm the chief executive of an organization that is dedicated to maintaining U.S. leadership in air and space, and I don't think I need to argue before this committee that aerospace leadership is vital to our national defense and economic development. I also happen to be a director of the Avemco Corp., which writes more hull and liability policies than any other company, so I am somewhat embued with the problems of the insurance industry as well, although we certainly have a very fine insurance witness on the list, and I'll try not to say too much there.

We might go back to the question of our leadership. We became the leader because this is a technologically advanced nation and because people wanted to be in aviation and it was affordable. In other words, for at least the first 75 years after the Wright brothers, somehow or other people could afford it, even though they had to scrape to get into aviation. And out of this came the designers, the pilots, the pioneers, the technicians, later the space scientists and astronauts, who are manning the system.

Now the cost of entering the system has gone out of sight. Since 1980, new pilot starts are declining. There are fewer active pilots today than there were in 1980. In other words, the cost of entry has gone out of sight, and so the base of the people pyramid is being eroded, and at a time when our leadership is being challenged as never before. In short, our leadership in air and space is at serious risk.

Now what happened to the cost of entry? Well, you could attribute it to any number of things, but it certainly appears to most of us that the main villain is product liability and the increasing product liability costs.

From the standpoint of aviation, product liability is a perfect example of a socioeconomic trend that has run amuck and must be reversed.

This trend is a recognition, and a proper recognition, of the fact that someone has suffered harm and should be compensated—perfectly reasonable. But the main compensation mechanism is the tort claims system as it's administered in various courts, and there is great difference in the way these rules are applied, and many overgenerous damage awards are now causing great economic difficulty, as will be brought out in the course of the day, I know.

Punitive damages, for example, which are a unique U.S. invention, are not limited to cases where punishment may be merited. There's no uniform statute of limitations or statute of repose, as

Mr. Copulos has pointed out. Victims have to wait for years to receive their compensation and, when they do, the percentage they realize is unconscionably small while the lawyers' share is unconsionably large.

As a matter of fact, I am very much impressed with the statements I've heard from the bench. I think we've already had a very good overview of the problem, but I think we all agree on what it is, which tells something.

Anyway, we know that all of this has added enormous product liability costs to the price of aircraft, and this is the major reason, in my opinion, for the excessive entry costs which are eroding the people base of the aerospace structure.

Now let me put on my insurance hat for a few minutes and discuss the problem from that side. If it is true that people in technology are the basic elements of our aerospace establishment, it's also true that insurance is the glue that holds the system together.

Today it's no exaggeration to say that product liability litigation has created an insurance crisis and the glue is melting. The judicial expansion of the legal theories upon which a person can seek to recover money damages for any real or imagined wrong—pure comparative fault, joint and several liability, punitive damages, and bad faith suits against insurance companies—all these exacerbate the problem.

In my statement I give a few examples, and I'm sure there'll be many more horrible examples brought out in the course of the day, so I will skip the reading of those, since they are available to the committee.

However, I would like to note one major problem area in the insurance industry. Policies of insurance are generally very carefully written. Although there are occasional ambiguities in a policy, the plaintiff's bar, supported by the liberal appellate courts, have used, contrived, convoluted, and strained logic to broaden the duty to indemnify and defend an insured. An insurer charges a premium for a known risk. If the various State courts continuously change the rules on the insurer after the fact, the insurer is forced to assume a broader risk without getting an appropriate premium for that risk. In other words, he or she cannot identify the exposure.

This type of problem is further compounded by the legal fictions that serve to increase verdicts in favor of plaintiffs. Two examples are illustrative. In a wrongful death case where the widow had remarried, the rules of evidence—at least in California—preclude the defendant from introducing into evidence the remarriage; and yet the plaintiff's attorney is free to introduce evidence showing the alleged economic loss to the widow for the rest of her life. We also have a rule of evidence called the collateral source rule which allows the plaintiff to recover payment for medical bills even though they have been paid by another insurance company.

All of which, Mr. Chairman, has brought us to the point where there is not enough insurance capacity in the United States to cover the expanded risk. Meanwhile the reinsurance market in Europe has dried up and will remain so until the product liability picture in this country makes more sense than it does today. We must remember that in the eyes of our friends in Europe, where there is very little product liability litigation and no system of punitive damages, what is happening here is a theater of the absurd. All losses come from the United States, and our European friends want no part of it.

Of special interest to this committee, of course, is the possibility that adoption of new technology available to manufacturers may be deferred because of the risk that the modification will be used as evidence in a product liability court case. While it is difficult to give specific examples for obvious reasons, there is every indication that the concerns of Mr. Lewis and Mr. Glickman are well founded. Clearly there is a need for legislation to make such changes inadmissible as evidence, thus removing a potential impediment to technological advance.

And it is to be noted that most of the product liability bills which have been proposed contain provisions that would, indeed, make so-called remedial measures inadmissible as evidence.

There's also reason to wonder whether the disappearance of some of the smaller and more innovative aircraft companies is due to the increased product liability risk.

To summarize, Mr. Chairman, the current system for dealing with product liability cases is contributing significantly to the increasingly high cost of entering the U.S. aerospace system. Fewer people are entering the system. This creates a threat to the system and to U.S. leadership in air and space.

Aviation insurance, which is vital to a thriving aerospace system, is losing its ability to fulfill its essential role. Product liability may be slowing down the adoption of technological improvements, and probably is, and discouraging small innovative business and enterprises.

Mr. Chairman, this concludes my statement. I'll be happy to answer any questions. And, again, thank you for the opportunity to make a statement.

[The prepared statement of Mr. von Kann follows:]

STATEMENT BY CLIFTON F. VON KANN, PRESIDENT, NATIONAL AERONAUTIC ASSOCIATION

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

On behalf of the more than 250,000 members of the National Aeronautic Association (NAA), its Divisions, Chapters and Affiliates, let me express my appreciation for the opportunity to express our views on Aviation Product Liability and its effects on the US aerospace establishment--a vital element of our Country's national power.

My deep concerns about liability stem from my NAA role on one hand, and also from the fact that I am a Director of AVEMCO of Frederick, Maryland. AVEMCO writes more aviation hull and liability policies than any other insurance company in the world. I will discuss the subject from both viewpoints.

From the NAA standpoint, the primary purpose and objective of our organization is to do all in our power to maintain our Country's leadership in air and space. As this Committee knows from previous hearings, U.S. leadership is being challenged more severely than ever before.

How did the United States achieve aviation leadership? It was a fortunate combination of American ingenuity in things technological, and the fact that over the 75 years that followed the flights of the Wright Brothers at Kitty Hawk the thirst of young Americans to be a part of aviation (and later space) could be satisfied. In other words entry into the system was exciting and affordable.

This matter of affordability cannot be overemphasized. Think of how many of our aviation greats started out by earning enough money—often by menial work at nearby airfields—so that they could take flying lessons. One way or another the entry hurdle was achievable. As a result, the personnel needed to man a great aviation establishment came into the system and provided aviation with a solid personal base. From this base there emerged our great designers, air carrier pioneers, airline pilots, technicians, test pilots, and, more recently, space scientists and astronauts.

Since the desire of young Americans to be part of air and space has never really diminshed, as long as entry into the system was affordable the base of the aerospace pyramid continued to renew itself—at least until recently. But this is no longer true.

Now, the cost of entry into the system is all but out of sight. From 1980 through 1984 student starts have been falling at an annual rate of 8.5 percent while active pilots have declined 3.1 percent each year. While the FAA forecasts express the hope that this will change, there is no basis for forecasting the change—except hope. The fact is that the people base of our aerospace structure is beginning to disappear,and the main problem is the rising cost of entering the system.

What happened to the cost of entry?

There is no single answer to this question. One could name a dozen causes. All would probably be correct in part—none in itself would be the whole answer. However, there is universal agreement that one causal factor stands out above all others—product liability. It was therefore appropriate that this Committee chose this issue as the subject for this hearing.

From the standpoint of aviation, product liability is a perfect example of a socio-economic trend that has run amuck and must be reversed. This trend is recognition of the fact that someone has suffered harm and should be compensated. The principle is reasonable; however, the main compensation mechanism is the tort claims system as it is administered in the various State courts. Some courts provide overly generous damage awards. Punitive damages (a unique U. S. invention) are not limited to cases where punishment may be merited. There is no uniform statute of limitations or statute of repose. Victims have to wait for years to receive their compensation. When they do, the percentage they realize is unconscionably small while the lawyers' share is unconscionably large. All of which has added enormous product liability costs to the price of aircraft. This is the major reason, in my opinion, for the excessive entry costs which are eroding the people base of the aerospace structure.

Other witnesses will elaborate on these points. I would now like to offer a few remarks on the subject from the insurance standpoint.

If it is true that people and technology are the basic elements of our aerospace establishment, it is also true that insurance is the glue that holds the system together. Today it is no exaggeration to say that product liability litigation has created an insurance crisis, and the glue is melting. The judicial expansion of the legal theories upon which a person can seek to recover money damages for any real or imagined wrong; pure comparative fault; joint and several liability; punitive damages; and "bad faith" suits against insurance companies--all these exacerbate the problem. Let me cite a few examples.

Under the doctrine of pure comparative fault a plaintiff can file, prosecute and recover a money judgement in court even if he is 99 percent at fault for the cause of his injury. The defendant's insurers must incur the cost of defending these lawsuits.

With "bad faith" suits an insurer faces a second lawsuit for "bad faith" each and every time he or she rejects a settlement demand (no matter how outrageous)--or for failing to negotiate, trying the case for the insured and winning the case.

Punitive damages create very real problems for insurers. In California one insurer has been held to have a duty to defend and insure in a lawsuit where the only issue was punitive damages, even though the California Supreme Court had held that it is against public policy in California to insure for punitive damages.

Clearly punitive damages need to be limited. Cases of willful negligence and reckless disregard have been suggested as the only kinds where punitive damages should be considered. In any event, if punishment is deserved, it should not be the insurer who is punished for when this is done punitive damages are not really punitive.

In two recent cases it was held that an insurer not only has an obligation to pay the legal fees and expenses of the attorney it hires to defend the insured under the terms of the policy; he or she must also pay the fees of the attorney picked by the insured if the demand of the plaintiff exceeds the policy limit.

One final problem area should be mentioned. Policies of insurance are generally very carefully written. Although there are occasional ambiguities in a policy, the plaintiff's bar, supported by the liberal appellate courts, have used contrived, convoluted and strained logic to broaden the duty to indemnify and defend an insured. An insurer charges a premium for a known risk. If the various State courts continously change the rules on the insurer after the fact, the insurer is forced to assume a broader risk without getting an appropriate premium for that risk. In other words, he or she cannot identify the exposure.

If you add these problems to the costs associated with the ever increasing number of specious lawsuits and the increases in jury verdicts, you can see why insurers are increasing premiums and withdrawing from certain classes of business.

This type of problem is further compounded by the legal fictions that serve to increase verdicts in favor of plaintiffs. Two examples are illustrative. In a wrongful death case where the widow has remarried, the rules of evidence (at least in California) preclude the defendant from introducing into evidence the remarriage; and yet the plaintiff's attorney is free to introduce evidence showing the alleged economic loss to the "widow" for the rest of her life. We also have a rule of evidence called the collateral source rule which allows the plaintiff to recover payment for medical bills even though they have been paid by another insurance company.

All of which has brought us to the point where there is not enough insurance capacity in the United States to cover the expanded risk. Meanwhile the reinsurance market in Europe has dried up and will remain so until the product liability picture in this country makes more sense than it does today. We must remember that in the eyes of our friends in Europe, where there is very little product liability litigation and no system of punitive damages, what is happening here is a theater of the absurd. They want no part of it.

Of special interest to this Committee, is the possibility that adoption of new technology available to manufacturers may be deferred because of the risk that the modification will be used as evidence in a product liability court case. Clearly there is a need for legislation to make such changes inadmissible as evidence—thus removing a potential impediment to technological advance. Most of the product liability bills which have been proposed contain provisions that would indeed make so-called remedial measures inadmissable as evidence. There is also reason to wonder whether the disappearance of some of the smaller and more innovative aircraft companies is due to the increased product liability risks.

To summarize, Mr. Chairman:

- The current system for dealing with product liability cases is contributing significantly to the increasingly high costs of entering the U. S. aerospace system.
- Fewer people are entering the system. This creates a threat to the system and to U. S. leadership in air and space.
- Aviation insurance, which is vital to a thriving aerospace system, is losing its ability to fulfill its essential role.
- Product liability may be slowing down the adoption of technological improvements and discouraging small, innovative aviation businesses.

Mr. Chairman, this completes my statement. Thank you for scheduling this hearing and for the opportunity to testify. I will now be happy to answer any questions.

Mr. Brown. Thank you for your excellent statement.

Mr. Glickman, do you have any——

Mr. Glickman. Yes.

First of all, I thank you both for your testimony. And I would like to ask you both: do you know if or do you have any evidence that there has, in fact, been a deferral of new technology or new product development as a result of very large potential exposure for claims of damages under product liability suits?

Mr. Copulos. Mr. Glickman, I can cite one example and only in a most general way because I don't have all the details at my fingertips.

But in the area of—and it doesn't deal directly with aviation, so please bear with me—but in the area of chairlifts, which we see all around us; they're used by utility companies; they're the things that are mounted on the back of a truck on an arm that takes somebody up to work at certain heights. They're also used by fire departments.

Most chairlifts have legs which extend out to balance the vehicle from which the chair—the arm is moving, to keep it from tipping over. However, what was happening in many cases is crewmen operating these devices were in a hurry, didn't want to bother with that, and they'd try and get away with it—without using the legs, and very often there'd be an accident.

As a result, one of the manufacturers gave some thought as to installing an automatic interlock which would prevent you from being able to operate it unless these arms were extended. They found that what was happening in some cases is that the people were circumventing them when they began to offer them, and they—on the new chairs—and they had a debate in-house as to whether or not they should go back to the old users of this device, of these devices, that were built before anyone realized the need for an interlock, and ultimately they did go back and try to get it reinstalled. They really couldn't force people to do it, but there was a serious debate within the company whether or not the action of going back and retrofitting would be an admission of guilt or what have you. That's a small example, but it cites the type of thought process that goes on.

Obviously, it was something that should be done that is now being done. There was a real question as to whether or not they would, for fear of being literally sued out of business.

Mr. Glickman. General, do you know if any—of any examples, either in commercial or general aviation, where new technology or safety-related improvements have not been added as a result of this fear of big judgments?

Mr. von Kann. Yes, Mr. Glickman. This is a difficult thing to cite as a specific example, because it probably involves information within any given company which are proprietary and not public.

I think we all know, as people who know the ways of the world, that there undoubtedly are situations where a company is in litigation and their own counsel will advise against any changes or, for that matter, settlements of other actions, because settlements, as well as remedial measures, can now be used in court.

But I think it would be difficult to get a clear-cut case that I could say is black or white.

Mr. Glickman. I would say—perhaps some of the other witnesses may be able to testify——

Mr. von Kann. I would think so.

Mr. Glickman. It—I think we need some changes in product liability laws in this country, but I think that it will be difficult legislatively, not impossible but difficult. And one of the things that will help move us along is if we can have some quantifiable evidence, either on the safety improvement side or the new technology side, that the current state of the law is hindering the development of new products and making us uncompetitive.

I would just make one other—I would ask either one of you whether you think the production of airplanes and aviation is different and should be treated different than any product liability issues in the general industry.

Mr. von Kann. Well, yes, certainly. Aviation, first of all, is almost entirely federally controlled as far as certification, pilots, equipment, aircraft themselves. It's federally regulated. It is almost entirely interstate in nature. So there are many reasons why aviation is unique from that standpoint and why it does need a special attention, in addition to the fact that it is in what I would call an emergency condition right now.

Mr. Copulos. I would like to say I agree with everything the general says, but I'd also like to point out one other fact that some people may not be familiar with. The commerce clause of the U.S. Constitution actually had its origins in the fact that George Washington, after the Revoluntionary War, put together the consortium that built the C&O Canal. And it was his experience with the difficulties of conducting interstate commerce under the Articles of Confederation, and in particular as it related to interstate transportation, that caused him, even though he spoke very little at the Constitutional Convention—that was one of the areas where he actually had some tangible involvement.

So, in fact, interstate transportation was in large part what gave us the commerce clause to the Constitution to begin with, and there is no question that aviation is interstate at a minimum transportation in most cases.

Also, I think it's important to recognize that it is, as the general did point out, it's an area with a very, very heavy Federal involvement, where it is very closely regulated and where standards are set by the Federal Government, which takes us to a second point that hasn't been mentioned this morning and I think we need to take into consideration.

Based on various court decisions, the fact that you meet Federal standards is no defense, and I think there is something wrong with that. If the Federal Government says this is what the standards should be for safety, and you meet that standard, you should be able to introduce that as evidence in court, and yet in many cases companies are actually barred from introducing that fact into court, and it obviously would have an effect on jury awards.

Mr. Glickman. I would just have two comments. One is I'm glad George Washington is on our side and, two, I would say that your point is an excellent one: the production of airplanes is different than the production of most products in this country. And at every line of that production cycle Uncle Sam has to or should basically give its seal of approval.

And, therefore, it does seem that in the realm of fairness there ought to be the recognition of that, at least with respect to aviation—that the product liability side ought to take that into account. And it doesn't now. And I think that's very important to consider.

Again, a closing comment: This is a very difficult political issue for Congress to deal with, as you well know, because nobody wants to restrict access into the courts for people who have been harmed by sloppy or slipshod manufacturing. That's one of the ways you keep manufacturing up to a strong level, but at the same time we don't want to kill the goose that laid the golden egg, and that is what is happening now with respect to product liability suits, specifically as it relates to aviation. And so our job is to try to find a balance, and I appreciate your testimony on these points.

Mr. von Kann. If I might add one thing to your points there, it's also national policy, well established, and probably as a result largely of the work of this committee, that aeronautical R&D does receive Federal support because it's so important to the country. And now if it cannot be utilized, it simply defeats the purpose of what has been the will of Congress as well as the administration.

Mr. Glickman. Thank you, Mr. Chairman.

Mr. Brown. Very good point, General, and one which this committee, this subcommittee particularly, hangs its hat on in going into this subject in the depth that we do.

Mr. Lewis?

Mr. Lewis. Well, thank you, Mr. Chairman.

Although we're not going to solve the problems today by having these two gentlemen here, I'm wondering if you could respond to what may be some of the avenues or approaches we could take. Mr. Copulos has mentioned the statute of repose. Are there any other areas where the worst abuses that you could point out?

Mr. von Kann. Well, we pointed out—well, first of all, we now have a crazy quilt situation where in the various States you have many different ways of applying the various tort claims codes. So it seems to many of us that a uniform Federal standard is needed here. Now you've got this business of a plaintiff's attorney shopping around to see which courts they can get the most—they're most likely to get the best deal in, and California seems to end up high on that list.

We've mentioned the statute of limitations and the statute of repose. There seems to be a good deal of consensus that some provisions such as that are needed, and this would not take away the rights of those who suffered damage or harm to attempt to recover.

We have mentioned the matter of admissibility of evidence and the fact that some restrictions are needed here, so as to avoid inhibiting remedial measures or bringing new technology into the system.

There is a question—and I don't really claim to have the answer at this point—whether or not there should be a no-fault road in addition to the litigation road, so that a potential claimant could work out a no-fault settlement. I can see both sides of that argument, and it would expedite a number of settlements, but it would probably bring a lot of items up for settlement which otherwise would never even be taken seriously.

There is one item that has come up in some of the bills that have been put forth so far, and that is that a claimant who is unable to successfully prove his or her case may be forced to pay the court and attorneys' costs. And there is feeling that that would do a great deal to eliminate capricious legislation.

Those are a few of the major points that come to mind. That's not an exhaustive list. Mr. Copulos may have some other goodies.

Mr. Copulos. Well, General, thank you.

I think the one point I would add to what you just said—we have—I should note I'm chairing the tort law reform task force at the Heritage Foundation, and one of the things we are looking at is the notion of having a losing plaintiff—only, however, in class action suits—pay the attorneys' fees for the other side, for the prevailing party.

The reason we have looked at this is that we don't see—you know, it's been said that contingency fees are the key to the courthouse door for a lot of small individuals who couldn't otherwise afford representation. And where we seem to see a lot of abuse of the contingency fee system is in the area of class action suits, where people actually go out and shop for customers.

I became most aware of this in the agent orange situation which I looked into in some detail, and I should note that I had two tours of duty in Vietnam in the area where the heaviest spraying took place, when it took place, where it took place, so I had some personal interest there, and could find no value to the claims that were being made, which is in terms of the cause of agent orange—the agent orange being the cause of something. And, yet, I found, as soon as I started looking into it, there were attorneys actually advertising for clients, trying to get involved, trying to get into the case. And, yet, when it was finally settled and dismissed, Judge Weinstein said it never should have been brought in the first place.

Well, there's something crazy about a system that allows this sort of enormous $180 million settlement to be made on a case that never should have been brought in the first place.

And I think that in class action suits specifically, looking at having the prevailing party's legal fees paid by the other side, which is done in Great Britain incidentally, might be one way.

A second thing that we need to do—and I think we need to do across the board—is to go—to return to some extent to a fault-based system. There are far too many lawsuits today which are brought merely because somebody thinks they can get some money without there being even the most tangentiable [sic]—excuse me, the smallest—amount of evidence to indicate that the product in question really caused whatever the complaint was.

In fact, this not only results in huge costs; it can actually result in the loss of valuable technologies and products. I would cite a case from the pharmaceutical industry—bendectin, which was the only safe and efficacious drug for morning sickness, which through countless hearings and countless investigations has been examined and reexamined and reexamined and found to be absolutely safe and, yet, was withdrawn from the market because of the skyrocketing cost of product liability insurance premiums.

Today, as a consequence, there is no drug equally safe and efficacious available to pregnant women that suffer from what is called pernicious nausea. This is not just a little bit of an upset stomach in the morning; it can be a life-threatening illness. And, yet, they can't get the one drug that was effective in curing it, because the manufacturer can't afford to manufacture it.

Mr. LEWIS. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. BROWN. You wouldn't like to propose the possibility that there are too many lawyers chasing too few fees in the country today and that we ought to do something about the number of lawyers, would you, Mr. Copulos?

Mr. COPULOS. Not being an attorney, Mr. Brown, I will have to say that perhaps I may have some prejudice in the matter. I did enjoy Richard II, which contains the line, "The first thing let's do, we'll kill all the lawyers." [Laughter.]

But I think the real problem here is a mentality that thinks that money won through these lawsuits comes out of the air, that it's free money. They don't realize it costs everyone when specious lawsuits are brought.

There are some cases in West Virginia right now against the manufacturer of cans that carry gasoline, you know, that you fill your lawnmower from. In none of the cases is it alleged that the can was defective. Rather, it is alleged that, because the can was available to transport gasoline, the manufacturer is liable.

In one case some children were burned after pouring gasoline on a cat and setting it on fire. And because they couldn't figure out what brand of gasoline it was, they sued the manufacturer of the can. Well, I think somewhere along the line the parents ought to be responsible for watching their kids and trying to keep them from incinerating cats. [Laughter.]

Mr. VON KANN. I think the chairman's point is well taken on the number of lawyers.

Mr. BROWN. There are a few lawyers on this subcommittee; I have to be careful. [Laughter.]

Mr. BOEHLERT. Mr. Chairman, maybe we ought to have the American Bar Association and some of the judges before us to present some testimony. I, too, am not an attorney.

Quantifiable evidence—I want to pick up on the comment made by my colleague, Mr. Glickman. Do you have any, Mr. Copulos, any indication of cases where manufacturers fled the United States to go offshore and where they have actually cited the cost of product liability insurance as one of the key factors?

Mr. COPULOS. Mr. Boehlert, I can tell you of specific cases. I can't give you the name of the company, because they currently are negotiating the move. But there is a company that's in the business of manufacturing nonlethal devices for riot control, police, and so on—something we all perhaps might apply if we would like to see the level of violence in society lowered. They're a company which tries to give the police departments and fire departments—excuse me, police departments and State correctional facilities, and that is their market; they don't sell to individuals—the tools with which to control prisoners without killing them. OK?

Because of the cancellation of their product liability insurance, they simply are currently looking at a number of offshore sites to move their entire operation, costing about 350 jobs. Now this is not a huge loss. However, if you multiply it——

Mr. Boehlert. It is for those 350 people.

Mr. Copulos. It is for those 350 people. And if you multiply it across the board, what you find is that the threat of loss of jobs in this country is enormous. It's especially—for example, in the chemical industry, or in any industry, frankly, which is producing commodities today, because of the *Sindell* decision and certain other cases which have exposed people to liability for actions to which they really aren't—weren't a party, or may not have been a party—there are lots and lots of companies that are beginning to look offshore, and I think we may be able to stop the rush from happening by acting now. But if something isn't done soon, I think you will see a rush.

Mr. Boehlert. You mentioned that you are chairman of the tort law reform task force of the Heritage Foundation. Any reports issued yet by your task force?

Mr. Copulos. No, sir. In fact, our first meeting is going to be on the 29th of this month.

Mr. Boehlert. So a report is probably some time in the distance?

Mr. Copulos. We will be issuing a number of things, and we're going to be trying to look at different solutions.

I should say that the one thing that I found about this particular issue—or two things, I should say. This is a nonpartisan issue. This cuts across the board.

Mr. Boehlert. Sure.

Mr. Copulos. And it has nothing to do with liberal-conservative, Republican-Democrat. We've got a system that's out of control, and I think most rational people recognize it.

Second, each industry, whether it be general aviation or machine tools, or what have you, has their specific set of problems. It is a generic, across-the-board problem, and it isn't just limited to manufacturing and to retail sales. Local municipalities, for example, are having problems—local county commissioners and city council members are resigning because they can't get liability insurance. Obstetricians are dropping out of the business of delivering babies because they can't get insurance.

Mr. Boehlert. Day care centers——

Mr. Copulos. Day care centers. You go across the board. And, obviously, something needs to be done.

Mr. Boehlert. Well, there's a liability insurance crisis in America of monumental proportions right now, and that could occupy all 200-or-so subcommittees of this House and every one of our Members. It's a serious problem.

And I really want to thank both of you for very fine statements. And I would hope that you would share with us, Mr. Copulos, as your task force develops some reports, your pearls of wisdom.

Mr. Copulos. I don't know if they're pearls of wisdom, but I'd be happy to——

Mr. Boehlert. Oh, I think they will be.

Yes, General?

Mr. von Kann. I do have a specific example of what you ask. There's a colleague of mine who is an officer of the NAA who wants to go into production of ultralights. He just can't do it in this country because he can't get insurance, and if he can't get insurance, he can't get financing. So he has been wandering around offshore in the Caribbean. The last I heard, he thought he had an attractive possibility there. And it was even made more attractive by the fact that, if you want to sue somebody there, you apparently have to post a 1.5 percent bond, which slows things up a little bit.

I don't know where that's come to, but this is one example of a fellow who's very serious, but he just can't make it in this—on these shores.

Mr. Boehlert. General, in your statement—and this will be my last question—you mention that attorneys shop around for States where they're most likely to get what they want, or at least a great deal of satisfaction financially. And I think New York and New Jersey and California are at the top of the list or the bottom of the list, depending upon your point of view.

What are the States on the other end of the spectrum, and why do you think they're there?

Mr. von Kann. Well, I think I'm going to have to defer that to some of the expert legal witnesses who are to follow.

I know I've heard those States cited as the horrible examples, and the others are kind of lost in the static. But I know we do have witnesses that will come before you today who can answer this much more exhaustively than I could.

Mr. Boehlert. But the basic premise you advance is that we should have uniform Federal standards?

Mr. von Kann. Yes.

Mr. Boehlert. And may I ask—does the Heritage Foundation share that point of view?

Mr. Copulos. Yes, sir. We are looking at—we are—in fact, one of the things we're looking at is a uniform Federal standard or, at a minimum, to see if at the State level something can be done to introduce a degree of uniformity.

If there were 50 State laws that were basically in agreement, then you wouldn't need a Federal statute.

The other problem is that there's also an awful lot of case law in this area, and that further confuses the issue. For example, there is a New Jersey case which says that, even if a manufacturer was unaware of a—did not know about a potential defect, and could not have known—it was technologically infeasible to have known about the possibility of that defect—they could still be held liable.

So today you're being held liable for things you couldn't know about, and that, to me, is an example of the kind of State level decision that somehow needs to be addressed as well.

Mr. Boehlert. Thank you very much.

Mr. Brown. Mr. Packard?

Mr. Packard. Thank you, Mr. Chairman.

One of the real problems of general aviation is competition from foreign countries. Is there a different—or is there any evidence of a different standard or a different practice in litigation or the risks of liability with foreign aircraft in this country compared to our domestic aircraft?

Mr. VON KANN. Well, there, again, I think I'd probably want to defer to some of the legal experts who are to follow, but I have seen studies on this question of product liability offshore as against what it is here. And, of course, the first and outstanding fact is that we're the most litigious country in the world. So there is much more of it here. There's relatively little of it in other countries.

Second, the other countries do not have punitive damages. So that, of course, expands the risk greatly in this country.

Now I think maybe you were wondering whether or not foreign manufacturers have second thoughts about importing or exporting into the United States.

Mr. PACKARD. No, just the opposite. My concern is that—do foreign importers into our country receive some kind of a benefit—already having a sizable part of the marketplace, are they getting some kind of a benefit because of a general attitude of not suing a foreign country—the inconvenience, the distance, the problems? Would they be more prone—and I guess that's the heart of my question—would there be—would a litigant be more prone to sue an American manufacturer than they would a foreign manufacturer?

Mr. VON KANN. It's my impression that the answer would be in the affirmative, from the studies I have read. And, again, I think probably we have witnesses coming up who have much greater depth in that particular point, but just because the fellow is remote, I think he does have a certain amount of protection just in the remoteness.

Mr. PACKARD. Do our—does our court system itself tend to favor or to discriminate against, let's say, domestic manufacturers and products in terms of liability compared to foreign competition?

Mr. COPULOS. Mr. Packard, I think we can answer that affirmaively because of a simple fact, and that is that the assets of the domestic manufacturers are located here. It's very easy to get tanding to sue. And if you do sue, there's something you can go attach.

Now if, for example, you're suing a manufacturer in West Germany or Japan or Great Britain, or wherever outside our boundaries, coming in as a foreigner you're going to have a much more difficult time getting standing to sue; their laws are different.

No. 2, even if you win an award, say, in the United States, unless here are assets here in the United States equal to the amount of hat award, you may sue and get a judgment, but then you might not get very much.

So it's very easy to go after the U.S.-based manufacturers beause this is where their assets are; this is the country the person s from; and it—there's obvious—it obviously does work against U.S.-based firms in that respect. That's why companies are considring going overseas.

Mr. PACKARD. Do the—in the insurance industry, General von Kann, is there a different set of standards in the insurance indusry for offshore companies compared to domestic companies, the overage requirements, the limits, the—is there a difference in writing insurance in the foreign country than there is in a domesic company?

Mr. von Kann. I am really not aware of that. Of course, I think each country has its own problems as far as the size of the available insurance pool and all that.

Mr. Packard. It would appear to me, however, that there would be or could be some differences in that there are different laws that affect insurance. In other words, if there is no liability in a foreign country that permits punitive damage, for instance, the insurance, the type of insurance would likely be considerably different than one in this country where there is significant punitive damage opportunity.

Mr. von Kann. Well, I'm sure that is true, sir. And what I'd like to do is consult with my colleagues at Avemco and submit an answer for the record on that specific question.

Mr. Packard. Perhaps to conclude on this point then—that's the only question I have, Mr. Chairman, really: in your judgment there is—with relation to the product liability question, there are benefits to foreign manufacturers that sell in our country that would exacerbate—excuse me—that would exacerbate the already-existing concern in the general aviation area for foreign competition?

Mr. von Kann. I would say definitely.

Mr. Packard. Thank you, Mr. Chairman.

Mr. Brown. Thank you very much, gentlemen, both.

Mr. von Kann. Thank you, sir.

Mr. Copulos. Thank you, sir.

Mr. Brown. I think it might be desirable to shift our next—shift the order of our next two witnesses, because Mr. Stamper has a time problem with an airplane flight. So I'd like to call on Mr. Malcolm Stamper at this time, chairman of the board of—vice chairman of the Boeing Co., and representing the Aerospace Industries Association.

Mr. Stamper?

We're happy to have you here, Mr. Stamper, and you may proceed with your testimony.

STATEMENT OF MALCOLM T. STAMPER, VICE CHAIRMAN, THE BOEING CO., REPRESENTING THE AEROSPACE INDUSTRIES ASSOCIATION

Mr. Stamper. Thank you.

Mr. Chairman, I am Mal Stamper, vice chairman of the Boeing Co. I am pleased to be here today on behalf of the Aerospace Industries Association to express our views on the subject of product liability.

I want to thank you, Mr. Chairman, and the entire committee, for turning your attention to this important issue, and for your focus on the aviation industry.

As designers, developers, and builders of aircraft and space systems for civil and military purposes, we are concerned with product liability. We are even more concerned, let me emphasize, with product reliability. Our highest and most consistent priority is the pursuit of safety—the prevention of product failure in the first place.

Over the years we have been reasonably successful. Millions of people fly the commercial airlines every day, putting their trust in the aircraft we in the industry manufacture. American astronauts have traveled to the Moon and walked in space, confident of our industry's ability to get them there and bring them back safely.

Much of our national defense rests on the quality assurance built into our military aircraft and space systems. The U.S. aerospace industry is built on a foundation of safety and a tradition of continually improving product dependability. Over the years we have developed a zero tolerance for the failure in this area.

We also have a tradition in this business of facing up to our responsibilities. Those who use our products put their lives in our hands every time they board a commercial airliner or fly in defense of freedom. When we fall short in fulfilling our obligation, then we should step up to the responsibility of seeing that victims or their claimants are compensated promptly and fairly.

We believe that the present system imposes additional burdens of delay and uncertainty on accident victims or their survivors—burdens which could be alleviated through more expeditious and fairer methods of compensation. Resources are being wasted that could be better used to improve the system and diminish the problem. Improvements in air transportation, to a great extent, lie in the effective use of technological research, and we can be appropriately resentful of funds used solely to cover protracted litigation expenses. Such funds could be more gainfully employed through technical investments in product improvement, for the safety and comfort of the traveling public.

Boeing's insurance costs have increased significantly for substantially less coverage. To compensate, Boeing has become virtually a self-insurer this year. For smaller companies, particularly in the general aviation sector, the problems loom larger and, I understand, could affect the viability of some.

Looking out for the innocent victims and their survivors as well as the traveling public can be handled far better than our normal practice today.

For example, while the cause of the crash of a Japan Air Lines 747 last August 12 has not yet been officially determined, Boeing and Japan Air Lines have agreed in principle to share compensation costs equally. We supported this action with our customer, Japan Air Lines, to assure that the families of those killed in the crash and the four survivors are promptly and adequately compensated for their losses, without having to await the conclusion of the investigation or any fault-finding determination.

Later, when the cause of the accident is determined, we and JAL, or whoever else is involved, can settle accounts among ourselves. This is in the Japanese tradition—to look first to the needs of the victims and their families and later to the other concerns involved. There's a lesson worth learning here.

Since claimants are innocent in virtually every air crash and clearly due compensation from some source, it would make sense to establish a system under which the aviation community automatically and promptly compensates the victims or their beneficiaries. Such a system would avoid the costs of protracted litigation, speed up compensation payments, and restore balance and justice to a currently confusing and increasingly complex procedure for determining liability and awarding damages. Claimants could still have access to a jury trial, if desired, but compensation would be accelerated by deferring fault-finding until later.

While the aviation industry differs in some ways from other consumer products, there is a basic similarity. Any manufacturer of a product for public use or acquisition should either accept a reasonable degree of responsibility for the safety of that product or get out of the business.

In that regard, I respectively suggest to the committee that we should set an example in the aerospace industry—that other industries may wish to follow—by willingly making restitution first and determining fault later. Model compensation legislation built on the principle that liability is an obligation to be honored, not avoided, could take much of the pain and injustice out of the present litigation process.

I invite the committee's attention to a study undertaken recently by the Institute for Civil Justice of the Rand Corp. Based on an analysis of jet transport accidents between 1970 and 1982, the study examines the whole issue of compensation and the factors influencing the costs of litigation. We are confident that this independent study, to be publicly available next spring, will show that the type of compensation system we propose would dramatically reduce liability settlement time and costs.

Therefore, we recommend the establishment through legislation of a relatively simple procedure which would only require, in the case of an air crash for example, the filing of a plea that damages were sustained. No fault would have to be alleged or proven. Damages would be determined by rules established by the new law, but generally limited to economic losses.

Without contest on the issue of fault, settlement could either be reached between the plaintiffs and the aviation defendants, or the plaintiffs, as I have already suggested, could seek trial by jury on the amount of damages. In any event, the process would be much faster and fairer than the present system without elimination of the adjudicatory system altogether.

Such legislation could also consider the question of catastrophic events, including crashes resulting from acts of God, acts of war or terrorist attacks. The legislation might also address the highly unlikely, but mathematically possible catastrophic type of air accident where multiple planes and buildings might be involved, with the best interests of the flying public in mind.

Spending a moment to discuss the role of all of us who make up the "flying public" is probably worthwhile. For, as you know, it is really "we" who finally pay the bill. Whether the losses are covered by insurance purchased by the aviation industry or through industry's self-insurance where product liability coverage is unavailable, the costs are ultimately borne by the flying public.

The increasing cost and difficulty of obtaining insurance today is not unique to the aircraft industry, of course, but is showing up throughout the industry in general. It is becoming increasingly the case because of the remarkably high settlements rendered by the courts in tort cases, making insurance economically impractical. Indeed, manufacturers in the aviation sector have joined with other manufacturers in supporting legislation to reform the U.S. tort liability system as it applies to product manufacturers.

There can be no quarrel with the fact that our first and foremost duty lies with concern for the innocent victims and their survivors. Our second obligation is to the traveling public who put their trust and lives in our hands and pay the bill to boot. Only after we have satisfied the needs of these two groups can we turn our attention to those companies involved in the aviation industry.

We, the traveling public, however, must be concerned for those companies' well-being because they are the source for the reliable products, trained personnel, and the research and development that are the heart and substance of American aerospace. Balance needs to be brought into the system. We need to compensate victims fairly; we need to control costs to the flying public; and we need a healthy aviation industry for our national economy and security. We must be especially concerned for the future of general aviation, which traditionally has not enjoyed the same economic strength and depth of research and development as commercial aviation.

Mr. Chairman, we believe our approach to an increasingly troublesome problem is ethically and economically sound. At Boeing, as throughout our industry, we are committed to technical excellence in the protection of lives. When an accident happens, we are equally committed to the rights of the injured parties. We meet our responsibilities to our customers, advising them—as we did in the case of the JAL crash—of any situation that might have had any bearing on the accident. We move quickly in putting our best people to work on the problem, to prevent any recurrence, and to find technology ways to make the product better.

We advocate serious consideration of legislation along the lines I have suggested, in the belief that such an approach will improve the present product liability system, compensate victims more fairly, and set an example for other producers in other industries seeking a more equitable and efficient way to meet their responsibilities to the public.

Our hope is that, working cooperatively with general aviation, commercial air carriers of all sizes, and others in the industry, we can provide information to assist the Congress in developing legislation which effectively addresses many of the product liability issues challenging our industry.

Thank you, Mr. Chairman, for your committee's leaderhip in seeking to resolve an important problem confronting not only the aerospace community, but businesses and industries nationwide.

[The prepared statement of Mr. Stamper follows:]

STATEMENT PREPARED FOR DELIVERY BY
MALCOLM T. STAMPER
ON BEHALF OF
THE AEROSPACE INDUSTRIES ASSOCIATION OF THE UNITED STATES

Mr. Chairman, I am Mal Stamper, Vice Chairman of The Boeing Company. I am pleased to be here today on behalf of the Aerospace Industries Association to express our views on the subject of product liability. I want to thank you, Mr. Chairman, and the entire committee, for turning your attention to this important issue, and for your focus on the aviation industry.

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Thank you, Mr. Chairman, for your Committee's leadership in seeking to resolve an important problem confronting not only the aerospace community, but businesses and industries nationwide.

Mr. BROWN. Thank you, Mr. Stamper.

Mr. Glickman?

Mr. GLICKMAN. Thank you, Mr. Chairman.

Mr. Stamper, it's a pleasure to welcome you here. For the record, I would indicate that your company is the largest employer in my State, building both military as well as commercial aircraft, and we not only appreciate that, but we appreciate your personal commitment to restoring public confidence in defense expenditures, which I know you have been actively involved for some time.

I would like to basically ask a couple of questions.

One, on insurance costs, can you tell us what—either how much the Boeing Co. pays for product liability coverage or what the increase in cost of your insurance has been over the last few years? Is there any way, for the record, that we can get some sort of——

Mr. STAMPER. I'd be delighted to supply that for the record. I don't have it on the tip of my tongue, Mr. Glickman. It is substantial, though.

And we have had to, because of the increasing rates—and they will go up next year even more so, we're anticipating—we are virtually now self-insuring ourselves. We're not able to afford insurance, you know, at the old rates—the new rates, I mean. It's a problem for even a large company. We're going to do what—$14 billion worth of business this year, and so obviously we have some substance, but I really—my brethren in the general aviation industry are really hurt in this area. But it's substantial for us. We cannot afford to buy insurance; we now have to self-insure.

[Material to be supplied by Mr. Stamper follows:]

The Boeing Company's increase in product liability insurance costs have been substantial in recent years. For example, the increase in premiums between 1983 and 1985 is just under 300 percent. In order to limit the amount of increase, Boeing has for the first time self-insured for the first layer of liability. In other words, Boeing pays the first $25 million in liability before its more costly insurance coverage is even triggered.

Mr. Glickman. I'm just curious. You take a couple of big accidents like the JAL accident or the Air India accident, Boeing 747's go down. Even with self-insurance, potential claims under those accidents, not taking into question the issue of fault right now, but presuming that you have liability, the potential judgments, I assume, would be enormous even for companies the size of the Boeing Co.

Mr. Stamper. Yes. Certainly they are high. In the case of the JAL accident, we are insured on that, but obviously next year's insurance rates would reflect that settlement, if there is one that involves us.

In the Air India crash we don't know, of course, what the liability is, but you're flying hundreds of people. It's a serious obligation, and obviously the costs are high.

That's why on the catastrophic situations we don't like to dwell on the potential, but obviously you could put together in your own mind a case where you had a large plane falling in a city or several colliding, and it could be quite a catastrophe, and maybe beyond the industry's capability to support as time moves on.

I think legislation could address that in various ways. People have thought of surcharges on tickets' price that would help build a fund to cover things that could not be covered—acts of God or terrorist attacks. What if it is a bomb that has blown the plane up? How do you cover yourself there? There's obviously victims and there's really no one at fault that you can attack.

So I think legislation is due in that kind of area.

Mr. Glickman. OK. Now you have proposed a fairly significant piece of legislation. I think it's referred to as the Air Travel Compensation Act, and I haven't—I've looked at the bill, and I think there are some good points contained therein, but it is not terribly applicable to general aviation because it applies to basically commercial air carriers with 60-plus seats or an 18,000-plus payload capacity.

Could you see—one, would you agree with me this is not applicable to general aviation as it's currently introduced?

Mr. Stamper. I think that is correct.

Mr. Glickman. OK. How can we get you and general aviation to get together in terms of applicability of Federal legislation, because their problems are somewhat different than yours?

Mr. Stamper. I guess I've concentrated so much on our side of it that I haven't given, you know, that a great deal of thought. That's something we'd have to look into clearly.

Mr. Glickman. I'm just saying that I doubt that you're going to see Congress take a bill like this and run with it unless it's somehow melded with other aviation interests as well.

Mr. Stamper. We'd be most interested in seeing how we could blend those both together and solve all the problems at one time.

Mr. Glickman. Now let me ask you the question that I asked the first witness. This subcommittee—this committee has jurisdiction over technology issues, and I want to know how the Boeing Co. views the development of either new technology or remedial efforts in current technology as it relates to the issue of product liability. Are you less prone to develop new technologies as a result of the current state of product liability law?

Mr. STAMPER. I'd have to honestly say we're not. In fact, we approach it from the standpoint of, if there's a way to find a better way to build an airplane, then we want to do it, a safer way to do it. And we just sort of head down and locked in that objective. I guess you could go back and prove very clearly that moneys that we're spending—or the same way, of course, in general aviation where it's much more dramatic—moneys that we expend improperly aren't addressing the problem but are going into litigation expenses could be more attractively put there, and we'd be a healthier economy doing it.

But we don't—we don't spare the horses when it comes to finding a way to improve a product. We feed back every single failure of an airplane—a rivot breaking, whatever—every part through all the airlines' records come right into our engineering department, and we rebuild the airplane based on that knowledge. So that the planes are empirically developed now.

A crash is very valuable. We put our best people on it. We say, "This is not going to happen again."

Mr. GLICKMAN. But you could see that problem being more acute in the general aviation sector where they don't have the capital availability that you do?

Mr. STAMPER. Oh, I think there is a serious problem there in general aviation, just because of the critical mass. The research is very demanding there, and they just—you know, the cost of the airplanes, the amount—the size of the companies—they have a very serious problem.

Mr. GLICKMAN. Let me ask you a question, something that's intrigued me for some time. There is a term in the aviation jargon that's coming out called geriatric airplanes, which reflect the fact that we have a lot of airplanes flying a lot longer either than they were intended to fly or greater utilization than they were ever intended to be, perhaps as a result of deregulation.

I mean, yesterday when I flew on—back from the central part of the country—I was on an airline that the pilot was telling me the utilization of that airplane the last few days, and I mean the plane just never rests. It just goes, goes, goes.

Have you explored the effect of utilization of current aircraft and how it would relate to liability issues? That seems to be an area that one of these days we're going to have to face directly.

The way we're utilizing our aircraft—are we wearing our airplanes out, either our engines or our airplanes, and maybe getting to the point where we don't really know specifically what will happen with that kind of utilization and how that would relate to the whole product liability issue?

Mr. STAMPER. Well, in our—of course, in a commercial airplane, any of our jets, we are pretty knowledgeable about the life capability of not only the airplane, but every part in it. We build a fatigue test model and a static test model both, and we fly that airplane with a computer, you know, for the equivalent of several—what we recommend its life expectancy to be. For the 747, it's expected that, say, you fly for 30,000 hours, which you could, you know, very easily—we design them to go 60,000 hours. And we actually fly the airplane through its takeoffs and landings and all of the stresses on it by computer, moving all of the parts. And as pieces break on that over time, we know the life expectancy of any small part in it, and we go back and strengthen that part. We can tell when—even for an old airplane, whether it's flyable or not.

But your point is extremely well taken. The earlier example of the gear box that was 40 years old, beyond the life expectancy—there is a life to all things. And to hold the original manufacturer responsible for something that's, you know, exceeded its life expectancy does sort of stretch your imagination somewhat. That's a problem that needs to really be addressed as to where does the liability stop.

I mean, if a person's flying a—we should have had B-17's out for a demonstration. They're 50 years old, and they were flying in the sky. And that's quite interesting. And, of course, we checked it over down to a gnat's hair, but suppose someone was deciding that they just wanted to start up an airline business with a plane that's 50 years old.

Mr. Glickman. And you can do that now. I mean, that is, the FAA—you could take a carrier, a new carrier, and they could buy airplanes that are very, very old and fly them, and not have to recertify the aircraft; isn't that correct?

Mr. Stamper. That's correct; you don't have to recertify. There are good controls, though. They don't let planes fly that aren't—don't meet a certain standard. I wouldn't want you to feel you're out there at any great increased risk because of the age.

We would like to see these older airplanes retired for economic reasons. We're building these nice new ones. [Laughter.]

Mr. Glickman. Sure.

Mr. Stamper [continuing]. That are really fine.

Mr. Glickman. Well, you know, this is a problem that has some complexity because I'm sure that those on the plaintiff's side of the picture would feel that the current state of the law acts as kind of a preventative or curative effect to make sure that manufacturers and users are up to their toes, but I do think that this problem of utilizing aircraft beyond their intended life and then retrofitting them is a problem that is more acute in general aviation.

Mr. Stamper. I think that's very true——

Mr. Glickman. It's certainly not as true in a lot of other things, because a lot of products just aren't used—automobiles are the perfect example—after 6, 7, 8 years you just don't see very many automobiles being driven.

But I appreciate your testimony today, and we'll look at this bill. I think it has some excellent provisions in it, particularly give some positive benefits to victims that they do not have under the current state of the law, where they may have to wait 11 years, 12 years, 15 years to get any compensation whatsoever, and the trick we have is to try to find a balance, and that's what we're going to try to do.

Thank you.

Mr. Stamper. Thank you very much.

Mr. Brown. Mr. Lewis, do you have any——

Mr. Lewis. I have two questions, Mr. Chairman.

Mr. Brown. Yes.

Mr. LEWIS. What is your experience regarding settling out of court as compared to fighting the suit if you believe your company is not at fault?

Mr. STAMPER. I didn't quite hear you.

Mr. LEWIS. What is your experience in regard to settling out of court, settling out of court, as compared to fighting the suit in court if you feel your company is not at fault?

Mr. STAMPER. I would like to probably submit an answer to that for the record and let the attorneys help with that. They have, you know, fine data on it. I'm just not real knowledgeable on it.

[Material to be supplied by Mr. Stamper follows:]

Boeing's experience in settling cases demonstrates a willingness to settle, including cases for which Boeing feels it is not at fault. Unfortunately, settlements are not possible until issues of choice of law, including liability and damage standards, and comparative fault standards are resolved by the court. Once resolved, the defendants involved can calculate their exposure and ususally reach agreement among themselves. The present U.S. tort system erects a series of disincentives to speedy settlements.

Mr. LEWIS. You may want to do this one, too: do you feel that settling out of court increases litigation?

Mr. STAMPER. Yes, I think I'll defer that one, too.

Mr. LEWIS. OK.

Mr. STAMPER. It's not my field of expertise.

[Material to be supplied by Mr. Stamper follows:]

No. We do not beleive settlements increase the amount of litigation brought by claimants in aircraft incidents. As I have indicated, there is seldom any question that passengers in a commercial aircraft accident should be compensated. Since they are ultimately compensated, the number of claims is unlikely to be changed whether the claimant faces a negotiated or litigated conclusion.

Although I cannot cite any statistics, it is entirely possible that settling a case rapidly when the manufacturer was not at fault would cause claimants or other defendants to name the manufacturer even where fault obviously lay with another party. Boeing, like any other manufacturer, is reluctant to compensate a victim for harm demonstrably caused by another party. The system I have described would remove that concern by assuring speedy compensation to victims and leaving the defendant parties to resolve allocation of fault among themselves.

Mr. LEWIS. I'd like to ask one further thing philosophically, I guess. You're asking or stating with the legislation that, regardless of who is at fault, you make compensation to the victims or the survivors. Do you feel that there is any risk involved when somebody walks on an airplane, buys an airline ticket and walks on an airline and flies to California? Do you feel that they have—should share in some risk at all?

Mr. STAMPER. Well, that's an interesting philosophical question. Certainly I've always looked at it from the other way—that when they step on a plane that we've designed they're assuming that we've designed it so that they can get there safely, and that we ought to stand behind that.

I guess everything we do—we step into an automobile, we really know that the odds are that there are accidents out there; we could be a victim.

I think the point you're hitting on is right in where we're saying there should be some balance in here. That's why if you—if there are victims and you do handle the economic loss to them, but then who's paying for that? It's all of us that are flying, and we should have that cost controlled, and then all of us who are flying are dependent upon the people that are building these airplanes, and we need to make sure we don't bankrupt them in the process, so they can continue to serve us.

I think it's a—what we're looking for here is balance, recognition that people are accepting some risk. If you go to the World Series and you get hit by a ball, you know, you're there knowing these balls are flying in the stands.

I think there is some of that, and that should bring some balance to it. But I wouldn't want the pressure to come off the people that are building planes to make them right, so that the public would be safe.

Mr. LEWIS. Thank you, Mr. Chairman.

Thank you, Mr. Stamper.

Mr. BROWN. Mr. Stamper, I have just one question.

You made reference to the fact that the Boeing Co., maintains a record of every failure, every—you mentioned failed rivet, and so forth. I presume that data goes into a data bank of some sort. Do you know, by any chance, whether there is available on an industrywide basis an accessible data bank of material and component failures that might aid the entire industry in doing a better job of designing and manufacturing relatively failure-free equipment?

Mr. STAMPER. Well, certainly in our system, I guess I can't say off the top of my head, you know, how long we keep this information but every time there is a failure of a component or a system or a part in a Boeing airplane, the airlines feed us this data. We sit and analyze it with a special group. In fact, we have a group working 24 hours a day. You can call them any time in the world anywhere if you have a failure of a plane.

Because these planes are expensive, as you can imagine, if you have a plane—it's called AOG—airplane on the ground in Nairobi because there's a flap problem, you can get action at Boeing, you know, around the clock. We have people trying to get the airplane back in the air safely and effectively.

All of that information of the failure does feed into this group, and it's sorted out and sent to the engineers that design these parts. And on a periodic basis, depending on the type of part involved, it will be—we will retrofit a block change into the airplane. So the airplanes are upgraded, and then future designs—that is where we get the data, you know, what has failed and why it has failed. It's a very closed-loop type of a system, and I think the fine reliability we enjoy today is because of that kind of a system.

Mr. BROWN. Thank you very much, Mr. Stamper.

Mr. STAMPER. Thank you very much.

Mr. BROWN. All right, we'll go back to the next witness, Mr. John V. Brennan, who is president of the U.S. Aircraft Insurance Group.

Mr. BROWN. Is Mr. Brennan here?

STATEMENT OF JOHN V. BRENNAN, PRESIDENT, U.S. AIRCRAFT INSURANCE GROUP, WASHINGTON, DC

Mr. BRENNAN. Thank you, Mr. Chairman. Thank you for your invitation to appear here.

I do not have a prepared statement. I think I ought to make some mention of the company that I represent and some background that might be helpful to the committee.

I'm the president of the U.S. Aviation Underwriters. I am also a member of the American Trial Lawyers Association, the American Bar Association. And I spent more than a quarter of a century of my life dealing with aviation insurance and, in particular, aviation products liability insurance.

I don't think it's going to serve any useful purpose to discuss at length the so-called product liability crisis, certainly not in this room. Ladies and gentlemen in this room, I'm sure, are fully aware of the problems. It would be very much like telling Noah about the flood.

I would point out that there are a couple of areas that might be addressed that are unique to aviation. Before doing that, I'd like to make mention of a particular statistic that caught my eye yesterday, and that was that product liability complaints filed in Federal courts in fiscal 1985 increased 26.1 percent compared to 1984, and that's according to the Administrative Office of the U.S. Courts here in Washington.

I think this is a result of our society moving from one of individual risk to one of collective security, and maybe even to cradle-to-the-grave welfare state.

But the key to this whole problem of tort reform, as we view it, is the compensation of the accident victim regardless of fault. Whether this was intended or whether it just happened, in fact that's the way the system operates.

The problems with the system deal primarily with its abuses, and those abuses are at every level, not the least of which is among the Federal judiciary. And you asked for solutions to some of these problems. I think one must address in that particular area very strongly the people who are attracted to the bench, their qualifications, the strength, the support, and everything that goes with it.

Now dealing with some specific problems for aircraft manufacturers that I think put them in an equitable position regarding this compensation scheme, No. 1, all too frequently the operator of the aircraft, the pilot-owner, has no insurance or inadequate insurance, liability insurance, on that airplane. In most States people who own automobiles are required to carry insurance; it's mandatory. We have pools set up for compensation of accident victims in automobile accidents where there was an uninsured automobile.

The cost of this liability insurance today in aviation is less than what most people pay for their automobile liability insurance. An example: for $500,000, single-limit coverage covering all people onboard an aircraft, the cost is about $400. Now it will vary in different places in the country. It will vary a bit by aircraft, and it will vary a bit by the pilot qualifications and the airport that's used, and a number of other factors. But that's basically what the cost is today.

Too many people, either because of ignorance or because insurance agents have not given them the appropriate advice by sublimits which are 100,000 a seat, subject to a maximum for all onboard and property damage of possibly 500,000 or a million dollars, if somebody were to purchase $1 million of insurance, that cost of

$400 might approach $500; if they were to purchase $5 million, it might approach $900 to $950.

Another factor that's here in this purchase of liability insurance on the part of the owner-operator: that insurance today does different things. It was once thought that you should buy liability insurance to protect your assets. Most people who insure automobiles—airplanes today are interested in protecting a note they have with the bank, the bank requires it, or the airplane itself, more than they are concerned about the possible liability they might suffer if they injure or kill somebody.

In today's society we no longer have the intrafamily immunities or interspousal immunities. We have a different situation today regarding lawsuits brought by husband versus wife, estates of a husband, estates of the wife, suing one another after an aircraft accident to the benefit of children. Our society has changed dramatically.

Liability insurance was once thought of to protect the assets of that family. Today it's thought of taking care of a brother-in-law who may have injured his back in a runway accident.

Previously insurance was purchased under the title "accident insurance" and "life insurance" to do these things. Today the liability system is being asked to do that.

And, of course, when the insurance is inadequate, who do you sue? The people with the deep pocket. Who are the people with the deep pocket? The manufacturer.

A situation where there's inadequate workers' compensation benefits: an employee is killed aboard an employer's plane. He only can recover a limited amount under the workers' compensation statutes, cannot sue his employer. Who does he sue? He sues the manufacturer. Nothing to do with fault.

In the military, the estate of one of our servicemen who have been killed in an airplane crash cannot recover against the Government. Who do they sue? They sue the manufacturer, regardless of fault.

People traveling on international flights fall within the United States, though ticketed on an international flight, are limited in their recovery to $75,000 if the treaty is upheld. Who are they going to sue? They're going to sue the manufacturer, where there is no limit, regardless of fault.

Application of joint and several liability statutes—again, the deep pocket. Somebody had earlier mentioned the problems of municipalities in this country and their inability to purchase insurance—hospitals, et cetera. It all comes down to the same thing.

Somebody who might be 2 percent liable may have to pay 100 percent of a judgment.

No statute of repose—somebody else had mentioned that. I wouldn't go into that other than to say the records for aircraft that are 30 and 40 years old, let alone the design, is—are long since gone.

We still have a hell of a problem with state of the art. How anybody could know back in 1950 the things they know in 1985 is beyond me.

And, last but not least, inadequate accident investigation: this is particularly important with respect to general aviation. The NTSB, due to inadequate funding, staff experience and leadership, today is incapable of doing the job in general aviation.

The reports that they publish are not timely. They do not document the status sufficiently. Any data that is acquired in the investigation of an accident that does not go forth to support the probable cause finding is destroyed. And, yet, the NTSB has recently seen fit to remove people from accident sites who had the professionalism to investigate the accidents in a superior manner in cooperation with the Board.

The Honorable Jim Burnett, Chairman of the NTSB, in Atlanta, GA, on September 27, 1985, stated the following:

> The NTSB procedures governing party participation can't be all things to all people, and they are not. The NTSB can't protect the fairness of accident-related litigation and will not try.

In the October 14, 1985, issue of Aviation Week and Space Technology appears the following:

> Departures among all levels of officials at the National Transportation Safety Board are increasing because of dissatisfaction with the Board's top management, and the belief is growing that the independent agency is becoming a dumping ground for friends of the Reagan administration. The FAA is finding that six Safety Board staffers apply for each comparable job within the agency. Two recent top-level losses from the Safety Board included William Hendricks, Chief of Aviation Accident Investigation, to FAA, and Carol Roberts, Chief of Laboratory Services, to NASA.

Mr. Chairman, that concludes my comments. I'd be very happy to entertain any questions you might have on any of the subjects you've already raised.

I have a difference of opinion with a previous speaker on a couple of points regarding foreign manufacturers, and I might be helpful, if you wish to explore that issue.

Thank you.

Mr. BROWN. Mr. Glickman?

Mr. GLICKMAN. Mr. Brennan, I am seriously thinking about introducing legislation in this area. And while you have raised a lot of points today, I can't quite specifically determine what you think we in Congress ought to do with the problem of product liability as it affects aviation. So if you were writing a bill, what points would you want to see in it?

Mr. BRENNAN. I think the problems there are no different than those that apply overall. I think if the Congress wishes to federalize this area, they have an opportunity with respect to aviation because they already occupy that sphere. And certainly no one can doubt the interstate aspect of aviation, and I think there are other aspects, if you go back in time to Senator Tynings' law and others, where you could, without too much difficulty, draft a Federal law regarding liability.

I think it's a case where it's a microcosm probably of the overall problem, and it's probably easy for someone to grab hold of and define, since the Federal Government is already involved.

As far as specifics, I would leave that to others to recommend. We're not here to advocate any position, but rather identify problems and give some support possibly to positions others may espouse.

Mr. GLICKMAN. My second question relates to your industry, the insurance industry. Are you blameless in the whole issue of very rapidly increasing insurance rates? Have you been too eager to settle cases as opposed to fighting them?

I'm just trying to—you know, insurance rates are just going up like crazy in every area, from the small businessmen's just normally liability insurance up to the insurance of airplane manufacturers or anybody else. And folks on the other side—that is, folks who, let's say, representing plaintiffs, on that side—indicate, well, there may be some changes that need to be made in the laws dealing with the issue, but don't let the insurance industry get off scott free; they contribute to these problems.

I wonder if you might comment on that?

Mr. BRENNAN. Well, that's true, sir; we do contribute something to the problems—money.

I think that the industry has to be better understood; that those of you will recall in 1974 and 1975—and I'm addressing now the aviation—not the aviation industry insurance industry in particular, but rather the insurance industry in general. We heard about the medical malpractice crisis and the product liability crisis in 1974, and we worked on task force committees and all of these things, and nobody thought after a year or two to wonder what ever happened to that activity.

Well, what happened, frankly, was the interest rates in the United States went up dramatically; there were increases in premiums about that time. And with the increases in investment that was available to these companies, a lack of attention then was given to the claims handling, which is the most important aspect of the medical malpractice and product liability area, and companies concentrated on their investment income to their demise.

Now at that time interest rates went up 17, 18, 19 percent. Some insurance companies were actually buying business. Now this was financed by foreign reinsurers. It's an international business. At one point insurance became just like a commodity. Now it's changing.

So people who were buying their insurance well below cost during the past 10 years now are getting hit with these dramatic increases, and the big problem there is addressing the basic problems that existed in 1974 and 1975 were not followed up; that the action that should have been taken regarding those problems did not take place, and now we've inherited that.

Mr. GLICKMAN. But you don't think that, if you fought more cases to their conclusions, that you might be able to discourage some frivolous suits or people who take insurance companies for free rides?

Mr. BRENNAN. No, sir. We fight every legitimate suit. We many times spend more in defending an action if it has no merit. Of course, in today's world the question of whether it has merit or not is best examined in light of who else is available to pay for the injury rather than going back to our more traditional fault-finding process.

I might also suggest that in 1977 when two 747's collided at Tenarife, my company was the one that initiated the activity there with the Federal court judge and the cooperation of some fine companies to compensate the people who were injured and killed in that accident in the absence of the lawyers, to a large degree. Their contingent fees went from a third way down to about 16 and 17 percent, and those people were compensated in an accident that was as big as the Texas city disaster within a couple of years.

We followed that up at later dates with less success in Chicago with American and others because of the abuses of the legal system, not just the lawyers—the judiciary.

Mr. GLICKMAN. OK. A final question: has aviation product liability insurance gone up faster than other forms of liability insurance?

Mr. BRENNAN. In the past year, yes, very definitely.

Mr. GLICKMAN. Thank you, Mr. Chairman.

Mr. BROWN. Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

One question I'd like to follow up on Mr. Glickman: I question sometimes, doing a malpractice or liability suit, the capability or the competence of an insurance attorney as compared to the trial attorney who is pressing the case. Is there any merit to looking to see—to make sure that the insurance attorney is as capable as the attorney prosecuting?

Mr. BRENNAN. No, sir. I think there are people in the aviation community——

Mr. LEWIS. We have egos to pump.

Mr. BRENNAN [continuing]. Who would like to say that, gee, the plaintiff's attorney arrives in a Lear jet or a King Air and that the insurance attorney arrives in a low-priced automobile. I don't want to slander anyone.

It's not really a legal problem. These gentlemen who will be testifying today, who have been actively involved in the courtroom—the insurance industry in aviation employs the very finest trial counsel that can be obtained. Cost is not a question there. And their competence is unquestioned.

But everybody knows when you get into certain courtrooms in this country, you're not arguing law.

Mr. LEWIS. I see. Well, I'm in no way criticizing attorneys on either side.

Mr. BRENNAN. I understand that, sir.

Mr. LEWIS. I think you need the best you can get. Sometimes I question whether you all get the best that you can get sometimes.

You mentioned the NTSB and their reports. I'd like to know a little bit more about how they plan liability suits. For example, if the Safety Board found that there was an accident because of pilot error, can this be used as a defense by the manufacturer?

Mr. BRENNAN. No. The problem with the accident investigation is that many times the manufacturer is not going to have the opportunity to get the data he needs at that accident site to deal with the defense of the lawsuit which may arise 3 to 5 years later. The accident happened on a mountain top. Some people went out there and they took a look and they said, "pilot error." The plaintiff's attorneys find that there is inadequate assets to support the injuries to other people who might have been killed in that accident, so they sue the manufacturer. The manufacturer may not get notice of that until some years hence. By that time, that wreckage has all been destroyed. So you deal with a great deal of speculation.

And when you go before well-meaning people in a jury box and a judge in some jurisdictions, and these theories are raised before them, and they're allowed to speculate as to whether or not that part was on that airplane or the condition of that part at the time of the accident, et cetera, et cetera, bring in reams of paper that can be interpreted to mean different things to different people, you'll find a very difficult job in defending that manufacturer in that accident. He has to be on that accident site. He has to have the pictures, the documentation, the witnesses' statements.

In addition to that, there's a great deal of information that's developed in accident investigation that go to product improvement, that tell you how that product is being used in the field or abused in the field, as the case may be.

A lot of that data is lost today, and shouldn't be, in the public interest.

Mr. LEWIS. I see. Could you explain the difference between comparative liability and joint and several liability, which is most commonly used?

Mr. BRENNAN. When you're dealing with the comparative liability, you're talking about the allocation, and it can be used among defendants or whether you're talking about comparative in the sense that contributory negligence would no longer be an absolute bar to recovery on the part of the plaintiff, but we will find that the plaintiff has 20 percent contribution to the—whatever that total of 100 percent of the injury might be. Therefore, they'll allow 80 percent.

Joint and several deals with the allocation among defendants for responsibility for the injuries. So that a manufacturer may be held 10 percent liable, and somebody else might be held 90 percent liable but have no assets to provide the damages. So the party then, the manufacturer, that had the 10 percent liability finding will have to pay 100 percent of the judgment.

Mr. LEWIS. I see. Were you here for Mr. Stamper's testimony?

Mr. BRENNAN. Yes, I was, sir.

Mr. LEWIS. I'm sorry he had to leave, but I want to ask you a question about his testimony. What is your general opinion of the legislation he proposes to make—what do you think of the viability of making payments to victims or their families regardless of who is at fault, and find out later on who was at fault—the type of self-insurance program he was describing?

Mr. BRENNAN. We would endorse that today. I think we'd have to look at specific legislation, and we just look at it the same as you would—from the public interest. If there is a way to compensate people more efficiently, quicker, then we should be doing that.

I don't think there's a case today that can be made—certainly in the major airframe accidents—that safety is improved by all this litigation. That's just not the case.

I think that the question of compensation has to deal with guidelines, specific guidelines. I don't think it should be limited, but I think once you get beyond the area of economic damage, usually you're getting into areas of speculation. There may be some sound basis for some damages in that area, but I do think that that might be the area where the limit should be. I don't know how you compensate people for pain and suffering in—they spent an hour or half hour or something in a traumatic situation. Once you allow people to speculate as to what that might have been, those people onboard that Japan Air Lines 747 knew that airplane was going to crash for some time before it did. How do you compensate people like that? I don't know. I don't know how you compensate anyone for the loss of a child—many of these things.

But that's the way society handles this matter, this problem. It just seems to me that there ought to be better guidelines for the judge and the jury to deal with those problems, and I think that might be the role of the Congress.

Mr. LEWIS. I see. Thank you, Mr. Brennan.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Packard?

Mr. PACKARD. Thank you, Mr. Chairman.

You indicated just in your answer, last answer, that you didn't feel that safety has been affected by all of the litigation. In your judgment, has the settlements had any relation—or what relationship has the settlements had to the damage done to the claimants? Has there been a relationship to the settlements to the damage to—done to claimants or is there other factors in the settlement?

Mr. BRENNAN. I'm not sure I understand your question, Mr. Packard.

Mr. PACKARD. Well, I'm trying to determine whether, in fact, in your judgment there is a significant disparity between the settlements, the size of the settlements, and the damage that claimants sustain.

Mr. BRENNAN. I think in general the damage awards are excessive. I think that the settlements—I distinguish the two—are a result of what damage awards have already occurred, so people would say a case is worth this or that. In general, they're quite generous today. They're far in excess of—in recent years in acceleration of size than the inflation rates in other indicia of money in our society.

Mr. PACKARD. Do you think that there should be some legislative remedy of that problem that would place caps or would make inroads into the joint-several——

Mr. BRENNAN. I think it would be equitable. I think it's the only way to deal with the system now that it's fairly well identified as being runaway. And I think that what we should be focusing on is getting more of that dollar or premium, if you will, that comes into an insurance company, from whatever source, back to the victims of any particular accident without it being destroyed by so many fees, and I'm talking about defense attorney fees and plaintiff attorney fees, and the cost to the society to maintain all these courts and all the people that are involved in this.

Mr. PACKARD. Why is the insurance industry so concerned about the issue? Is it not possible for them to simply—do they not determine their premiums on the basis of the experience and, therefore, they are not subject to loss or bankruptcy; it's a matter just of adding to the premiums and recouping their costs? Why are they—why is the insurance company—companies and the industry so concerned about the high rate of settlements?

Mr. BRENNAN. I really can't speak for the industry; I only can speak for our organization. And we started in 1928 in this country. We're the largest and the oldest in this business. We have been committed to safety since day 1. Our requirements in terms of underwriting a particular account go first and foremost to safety. We will not insure some aircraft that other people insure, that the Government licenses, et cetera, et cetera. And I think that we have a fantastic record in that regard.

I think that we don't have to insure the Boeing Co. We were delighted to insure Mr. Stamper's company for many, many years at different times. We do not insure it at the present time. We did not insure many general aviation manufacturers of late. At the present time we do.

I think it's a case there of knowing what was going on in 1974, 1975, and 1976. When the rates went down below the level of what your lawsuit would be, you as a businessman—you have to make a judgment. That's the only way you can remain in business, and you decide not to put your chips on the table at that time.

Mr. PACKARD. Do you insure foreign—manufacturers of foreign aircraft?

Mr. BRENNAN. Yes, sir.

Mr. PACKARD. Do you find a different kind of insurance arrangement with them as you do with the domestic manufacturers?

Mr. BRENNAN. No. That's one point I'd like to clarify—that when a foreign manufacturer sells his aircraft in the United States, he's subjected to U.S. law.

Mr. PACKARD. Then let me ask the question I asked earlier: do you believe that, because of other reasons—not necessarily because of insurance coverage or the qualify of the aircraft or—do you think that there generally are less lawsuits against foreign competition than domestic manufacturers in this country?

Mr. BRENNAN. No, sir. I think that the United States dominates the aerospace industry worldwide, and I think that that's the reason we have the system we have today. Most of the people that travel on airlines worldwide—I think it's as high as some 40 or 50 percent possibly on some given days—are American citizens.

The aircraft are probably 80 percent American manufactured. We have every accident in a foreign country brought back to our shores. Now there would be more litigation in this country against foreign manufacturers if they were more successful in the sale of their aircraft and those aircraft were to be involved in accidents, and we've had that in the past.

Mr. PACKARD. Let me reverse the question, then, and ask: do you feel that settlements are higher or lower and that there is more litigation or less litigation by domestic manufacturers selling in the foreign markets? In other words, coming from foreign sources, is litigation and settlements at the level that they are here in this country?

Mr. BRENNAN. Yes, sir, as long as the U.S. court will hear the action. We have many cases that involve accidents in foreign countries involving American aircraft, and those suits are brought to the United States, and many judges will allow those cases to remain here. Even though you're talking about foreign citizens flying on a foreign aircraft, the aircraft happened to be manufactured or had some connection with the United States.

Mr. PACKARD. So the suit would be tried here?

Mr. BRENNAN. Yes, sir.

Mr. PACKARD. Is the reverse true? Is the suit tried in Germany if we sell an—or, rather, if we buy a German aircraft here, and an accident occurs here, do we—is the suit tried in Germany?

Mr. BRENNAN. It would be tried in the United States under most circumstances, if the accident was in the United States. You'd have great difficulty if it was an accident outside the United States and it was a German-manufactured airplane bringing the case in the United States——

Mr. PACKARD. But I thought you said that the reverse takes place—if the reverse is true, that it—the litigation takes place here, also?

Mr. BRENNAN. Well, this is the horn of plenty. Nobody wants to try a lawsuit anywhere else.

Mr. PACKARD. So what you're saying——

Mr. BRENNAN. You will find in all the litigation, even in the Bhopal accident now, defenders will go before the court and say, "We'll be very happy to go to India and have the Indian courts determine our liability and compensate those people in accordance with their laws." As I understand it, that question is still before the court. But we have had many of those cases before the courts here in the United States, and we have had some success. Unfortunately, there are still cases pending from many years on that subject, and the judges just haven't decided the issue, having no connection with the United States other than the aircraft happened to be manufactured some years previously in the United States.

Mr. PACKARD. So the United States is generally considered a much more lucrative place to settle it than it is anywhere else in the world?

Mr. BRENNAN. It's the only place to live.

Mr. PACKARD. Thank you, Mr. Chairman.

Mr. BROWN. Mr. Brennan, you made a couple of statements in general, first, having to do with the lack of adequate data from aircraft crash sites relating to the question of product liability, and then you said something about the NTSB having people removed from the scene of accidents. Are you referring here to insurance investigators or others who might try to collect this data that you think would be necessary for establishing product liability, and so forth? Is that the relationship?

Mr. BRENNAN. Yes. I think when the—it's a question of interpretation of regulations and what Congress' intent was when they set up the Board, and I think that that intent was good and clear; the world has changed. Part of it deals with economics. Most of the engine teardowns and other work that's done associated with a general aviation accident is paid by others, the insurance industry primarily, in one fashion or another.

There are more experienced investigators that are in the private sector today than there are in the Federal sector, and they have been working hand-in-glove with Federal investigators with a high degree of integrity and a tremendous degree of professionalism without ever there being an incident where anything that was discovered by an investigator on an accident site, to my knowledge, wasn't turned over to the Government immediately, but you will get a report—and by telephone within 24 hours. Within a matter of a week or two, you'll have a written report, pictures, documentation.

A lot of tests are run by manufacturers today, and somebody may say they're unnecessary, just to prove that that engine was capable of developing power or was developing power at the time of the accident. You may have to tear the engine down. You may want to determine what the condition of that crankshaft was—a whole host of things. The Government hasn't got the time or the money to do that, and they don't do it.

Mr. Brown. Are you implying, also, that they are putting obstacles in the way of private investigators doing that?

Mr. Brennan. Yes, sir; very definitely. I think that in the past year we've seen a major change in what had been previous Board policy by the, I'd say, the previous three Chairmen. The present Chairman, for some reason, has taken a very dictatorial attitude about this matter, has not seen fit to consult with some people, and has gone his own way. I'm not sure whether he's dealing with misinformation or what the source of this problem might be, but it's definitely a real problem, and it is a major threat to the general aviation manufacturers. It's not a problem to the major airframe manufacturers, airline accidents. This is strictly the day-in and day-out accidents that occur here and around the world that ultimately come back to impact our general aviation manufacturers.

Mr. Brown. Do I understand you correctly that you're being somewhat critical of the present level of qualification of key members of the staff of the NTSB? You made some assertion that they're——

Mr. Brennan. Yes, sir. I think that what they're doing is the best that some of those staffers can do under the circumstances. I think that the load that they're carrying today is a heavy one. I think they're drowning in a Niagara Falls of paper to fill out. I think the paper's important because it deals with crash worthiness and a whole host of substances, but I don't think the onsite investigation is as professional as it should be. There's more of a checklist going on because they have to get on to the next accident.

I think, unfortunately, a lot of the more seasoned investigators are no longer around, and there is a higher degree of expertise in the cadre that's outside the Board, and I think that would work well with the Board to the benefit of all concerned. There can be restrictions placed on anybody that's at that site, certainly by the investigator in charge. This has worked pretty well in—with certain, I'd say, a period of at least 6, 7 years. Recently that's been changed.

It's much more difficult now for a manufacturer to train their own investigators and then have them have the objectivity that's necessary in an accident investigation. They might be, by nature, somewhat subjective. And it's a situation pretty much akin to what you would want in a CPA audit. You want somebody out there to tell you in fact what happened quickly, so you can act on it. But I think that that's in the best interest of the public certainly.

[See appendix for NTSB statement.]

Mr. Brown. Do you have any further questions?

Mr. Glickman. I just ask one question: if there's nothing done legislatively, will aviation insurance dry up for manufacturers and users in the future? Will it just be unavailable?

Mr. Brennan. No, sir. I think that the problem is being attacked. It's going to be more costly. The biggest problem we have right now is the enormous recession in general aviation sales. And I think that so much money now is being diverted to the products liability problem, premium only being one. The time of engineers and management people is just excessive—without any improvement in safety.

We have good, quality products out there today. We have people who are really concerned about safety getting notice out, cooperating. I think we're going to have a difficult time affording the light aircraft that this Nation has enjoyed for many, many years—it's going to very well become a world of more wealthy people being able to afford an airplane, and I question whether that's desirable.

I think the research and development that is not now being done is being done elsewhere, and the money that's being put into this litigation could very well be spent in improving everybody's lot on the R&D side.

Mr. Glickman. Thank you.

Thank you, Mr. Chairman.

Mr. Brown. Thank you very much, Mr. Brennan, for your excellent testimony.

Next I'd like to call a panel of witnesses representing the general aviation industry: Mr. Edward W. Stimpson, president of the General Aviation Manufacturers Association; Mr. Charles Husick, senior vice president of Fairchild Industries; Mr. Robert Martin, director of Beech Aircraft Corp.; and Mr. Frederick Sontag, president of Unison Industries.

If you gentlemen would come to the table.

STATEMENT OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION, WASHINGTON, DC

Mr. Stimpson. Good morning, and thank you, Mr. Chairman.

I'm Edward W. Stimpson, president of the General Aviation Manufacturers Association. On behalf of our panel, let me express our appreciation for your interest in this subject, which is of very serious concern to our industry and which will be further detailed and documented by our witnesses this morning.

We have three witnesses this morning which will present the testimony of what's happening in the general aviation industry. On my immediate left is Mr. Robert Martin, who is the director of Beech Aircraft and also the senior partner in Martin, Pringle, Oliver, Wallace & Swartz in Wichita, KS. He obviously is a lawyer and will speak on the overall problem and some of the legal implications.

Next will be Mr. Charles Husick, who is senior vice president of Fairchild Industries. Mr. Husick is an engineer. He's been on the production engineering side of both aircraft and components, and will present his perspective.

And, last, Mr. Sontag, who is president of Unison Industries in Rockford, IL, who is a manufacturer of magnetos and small components and will tell you about the impact that product liability is having on his small business.

So if we may proceed, I will call on Mr. Martin.

[The prepared statement of Mr. Stimpson follows:]

General Aviation
Manufacturers Association

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STATEMENT OF
EDWARD. W. STIMPSON, PRESIDENT
GENERAL AVIATION MANUFACTURERS ASSOCIATION
BEFORE
SUBCOMMITTEE ON TRANSPORTATION, AVIATION AND MATERIALS
COMMITTEE ON SCIENCE AND TECHNOLOGY
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 22, 1985

I am Edward W. Stimpson, President of the General Aviation Manufacturers Association. Our Association represents 36 companies involved in the manufacture of general aviation aircraft, engines, avionics and component parts. Our manufacturers make aircraft from small single-engine training aircraft up to intercontinental business jets and commuter airplanes used by regional carriers.

We very much appreciate the interest of this committee in product liability. As you will hear from this panel, product liability is having an extremely serious impact on our industry. The general aviation safety record has improved significantly over the past few years. However, the cost of product liability has increased dramatically. The average cost per airplane for product liability insurance alone ranges between $60,000-$70,000, and this does not include accident investigation, defense and engineering costs. In some cases, these total liability costs exceed the cost of the aircraft itself.

Product liability is having a serious impact on sales. It is undermining our international competitive position. It is impeding the development and manufacture of new aircraft, particularly at the lower end of the line, and this is costing jobs in the industry.

This morning, three witnesses from GAMA companies will describe this problem in greater detail. Robert Martin, a Director of Beech Aircraft and a partner of the Wichita firm of Martin, Pringle, Oliver, Tripplet and Wallace; Charles Husick, Sr. Vice President of Fairchild Industries, an engineer, will point out from his perspective the impact of product liability; Frederick Sontag, president of Unison Industries, brings the viewpoint of a component manufacturer and will explain to you the impact of product liability on small business.

Mr. Chairman, as manufacturers we accept responsibility for our products. We are not seeking to avoid this responsibility. Safety is of the utmost importance in the design and operation of aircraft and to our survival. But what is happening, as you will hear from witnesses this morning, is that we have an extremely serious problem. Following the testimony of our witnesses, we will be glad to answer the questions of the Subcommittee. Thank you again for your interest.

Mr. Brown. Certainly. You may proceed, Mr. Martin.

The full text of each of your statements will appear in the record.

STATEMENT OF ROBERT MARTIN, DIRECTOR, BEECH AIRCRAFT CORP., WICHITA, KS, AND SENIOR PARTNER, MARTIN, PRINGLE, OLIVER, WALLACE & SWARTZ

Mr. Martin. I wish to thank the chairman and the committee for the opportunity to outline this problem to you.

My responsibility, as I understand it, is to relate the problem industrywide, as we see it.

First of all, let me say that our firm serves as general counsel for Beech, and in that role we have had responsibility, primary responsibility, for the defense of all product liability cases Beech has faced in the past 15 years. So we bring some experience to this problem.

I think the best way to address the impact overall on the industry is to give you some data that at the—in a cooperative effort among the manufacturers headed by the General Aviation Manufacturers Association and Mr. Stimpson. We collected cost data for product liability premiums currently from all members of the industry. And we don't have 100-percent response, but I think we have about 85-percent response from the manufacturers, and I'm not talking simply about airplane manufacturers but engines, props, avionics, and a host of smaller manufacturers who make products that the airframe manufacturer adds to his product in order to have a finished product.

What that survey reveals that in the current time the present rate of product liability insurance premiums, the general aviation industry will spend $180 million a year for either primary uninsured limits, which they become self-insurers for, or for premiums paid to—in the worldwide insurance market.

That is divided about $130 million to the airframe manufacturers and $50 million to the components manufacturers, and their costs for product liability are, of course, embedded in the price of an engine or a prop or a radio or any other piece of equipment that we buy.

Now—so with that $180-million-a-year base, let me give you some other figures: in the present year, 1985, which is in its final quarter, based on the sale of those and the projected sales by the industry, all the manufacturers are going to make and sell—they may make a few more, but they will sell, as we compute it in round numbers, 2,100 airplanes. That's the total all airframe manufacturers are going to sell on the market in the United States and abroad. That's it. Now the purchase price of that 2,100 airplanes has to pay this $180 million.

Now let's look at another figure. There are presently out there flying around about 210,000 small or general aviation airplanes. That's the fleet that has been built over the last 50 years, we'll say.

From earlier comments, there was some interest in geriatric airplanes. Let me depart from general statistics to give you a figure that I have on the tip of my tongue from Beech.

Beech has out currently flying in the fleet of general aviation airplanes between 1,500 and 2,000 airplanes that were designed in 1937 or before that. There are 250 to 300 airplanes that were designed in 1934. That 1,500 to 2,000 airplanes represents about 8 percent of the Beech fleet, and we are exposed to product liability on those airplanes.

We couldn't make those airplanes the same way, the same today, if we tried—totally different airplanes, but they are in the fleet. And we are exposed for those.

Other manufacturers have a somewhat similar history, but that gives you some idea of geriatric airplanes.

Now to return to the general aviation problem as a whole, if there are 210,000 airplanes out there, and we're only going to make 2,000 and sell 2,100, it's perfectly obvious that each airplane we turn out has to carry the product liability insurance burden for another 100 airplanes that's already out there. That is the problem.

We have to insure that entire fleet. When you take the cost of $180 million and divide it by the number of airplanes we will turn out this year, and say we have to recover that $180 million because we're going to spend it, you come up with a cost per unit that is at minimum $70,000 and may be as high as $85,000 per unit.

Now Cessna and Beech and Piper all made airplanes up to the present time that before this product liability crisis began to really get out of hand were sold for less than $70,000, many of them. We're talking about more than doubling the purchase price of a small, single-engine, fixed-gear, owner-flown airplane.

Last year Beech made a decision that it would stop making those airplanes, and we did stop making those airplanes. We made them in a plant in Liberal. We shut the plant down. We no longer make those airplanes. That plant and the tooling and the equipment for those airplanes is on the market, and we have no purchasers for an obvious reason. You can't sell those airplanes at the price you have to sell them to fund the product liability exposure that we're confronted with.

The small airplane market is essentially dead for all manufacturers. We're just not—we're not selling them, and Beech is not making them. Cessna and Piper, so far as I know, still are making them.

Now let's look a little bit at consequences. If you take this fleet of 210,000 to 220,000 airplanes that I said are out there in the United States—in U.S. registry and service, 90 percent of those airplanes fall into this small, light, owner-flown airplane category. Only about 10 percent of the fleet historically has been sold to businesses and corporations for corporate transportation.

Now with the cost burden of $70,000 to $85,000 on each one of those airplanes, we can't sell them to the owner-flown market anymore. So 90 percent of the market is gone.

We continue to make—Beech does—and we sell a declining number to corporations, to businesses, which are for the most part professionally flown airplanes. Cessna and Piper are also in that market, as is Lear, as are all other manufacturers. That is the market.

Now the problem that we face in terms of—before I get asked the question, let me give the answer. What is the effect of this situation, in my opinion, on science and technology as it applies to general aviation? The effect is simply this: First of all, because of a restricted market, a declining market, declining steadily every year over the past 5 years, we're not going to have funds available for research and development. But what funds we do have available for research and development, improvement of products and development of new products, is going to go into those large or what we call large, heavier twin airplanes that are sold to the corporate market and to Government, and sold exclusively in that market. There are very few owner-flown jets or turbine-powered airplanes.

That's where Beech is putting its experimental and research dollars, limited though they are. And that's where everybody else is going to put them.

The owner-flown airplane, 90 percent of the fleet, there is not going to be money available to improve those products. Those products are not going to be replaced. As that fleet of, in round numbers, 200,000 small, owner-flown airplanes ages without being replenished with new, advanced airplanes, they will become a safety problem. And in the present state of the law, as they become a safety problem, litigation will increase; costs will increase; and the situation will get worse.

Now what's going to happen long term, I think, and maybe not so long term, the industry in the United States is going to begin to dry up—first, with the components manufacturers. They're going to have to go abroad. And more and more, we're—we are importing—that is, we, Beech are importing—a far greater percent of the components and small equipment, all of which bear a product liability cost, from foreign manufacturers. And that will continue to increase.

The last time I checked, we had lost over 100 U.S. suppliers of systems and components that we want, who in most instances would simply say, "We can't make these profitably and sell them any more because of the product liability." That's where the industry will dry up.

Eventually, of course, the airframe manufacturers will have to go abroad, but that may be some years away.

One other thing I want to mention before I quit: this $180 million that we're paying for—just for product liability exposure—is $180 million that could go into research, improvement of products, and it's not going there.

It is also $180 million of which I would estimate someplace between 70 and 80 percent is represented by exported dollars, either in direct insurance or re-insurance. That money is going out of the country.

If you looked at the—and it would be interesting to look at the total bill for all aviation, commercial aviation, air carriers, operators, and manufacturers—that liability cost is going to approach a billion dollars, of which a majority is exported to European markets because they're the only ones that are currently underwriting the volatile risk that aviation represents.

That's a situation that general aviation cannot continue to live with, and we are at the point where it is a crisis. Fifty percent of the employees that used to have jobs in Wichita or in Kansas in the general aviation industry are now unemployed, and the layoffs haven't stopped at any of the major manufacturers in that State. And they're being laid off in other States. And that just counts the airframe manufacturers. It does not account for the small manufacturers—the components manufacturers who are gradually shutting down or getting out of the aviation line of business.

Thank you very much.

[The prepared statement of Mr. Martin follows:]

STATEMENT OF
ROBERT MARTIN, SENIOR PARTNER
MARTIN, PRINGLE, OLIVER, WALLACE & SWARTZ
AND
DIRECTOR, BEECH AIRCRAFT CORPORATION

My name is Robert Martin. I am the senior partner in the law firm of Martin, Pringle, Oliver, Wallace and Swartz, Wichita, Kansas. Our law firm serves as general counsel for Beech Aircraft Corporation. Since 1973, I have also served as a director of the company. For the past 15 years, our law firm has had primary responsibility for all product liability claims and litigations asserted against Beech Aircraft Corporation.

In an effort to better manage the product liability problems oft Beech, both the company and our firm have collected and studied the data available in respect to the product liability problems of the entire general aviation industry. For the past decade, it has been my opinion, shared by the management of Beech and the other members of my law firm active in the product liability field, that the general aviation industry has been approaching a crisis in terms of its ability to cope with the cost burden of product liability exposure. I believe that crisis is now at hand and that the following industry data support these conclusions:

There are at present approximately 220,000 general aviation airplanes registered and in service in the United States. At this date, GAMA estimates, based on manufacturers' reported sales, projected for the balance of the calendar year, tell us that a total of 2,120 new aircraft will be manufactured and sold during 1985. It is important to note that despite the general economic recovery that has been in progress now for some time, the trend in the unit sales of general aviation airplanes had continued its downward spiral. In round figures, 1982 brought sales of 4200 units; 1983, 2700 units: 1984, 2400 units and this year, 2100 units.

While the cost to general aviation manufacturers of product liability insurance coverage increased steadily through the decade of the '70s, commencing in 1984 premiums and related product defense costs increased at rates exceeding the increase experienced in 1968 through 1970 when the product liability litigation explosion began. In two years, industry costs for product liability insurance premiums and self-insured primary exposure have increased by a factor of 400 percent.

GAMA figures for the industry, collected directly from manufacturers, show that at current rates for product liability insurance coverage the U.S. airframe manufacturers will spend a total of $130 million per year for premiums and uninsured exposure. Components manufacturers (engines, propellers, avionics and a host of smaller systems and equipment purchased by airframe manufacturers to complete their products) will pay an additional $50 million in premiums and uninsured product liability costs. These costs can only be recovered through the purchase price of new units actually manufactured and sold each year. The result is that at current cost rates the industry's unit cost to underwrite its product liability burden is at least $70,000 per unit and may actually be as high as $85,000 per unit.

It might be argued that the addition of $70,000 to $85,000 to the purchase price of a $2 million turbine-powered corporate aircraft is not a serious deterrent to sales (although the present depressed rate for sales of corporate aircraft casts serious doubt on that conclusion). However, it is beyond dispute that unit product defense cost for the owner-flown, single-engine airplane in many cases more than doubles the purchase price of the airplane and has virtually destroyed that market. Historically, the general aviation industry has been built on the sales of small, single-engine, owner-flown airplanes. Of the presently existing U.S. fleet in service, 83 percent are fixed-wing, single-engine units. The light-twin engine airplanes, predominantly owner-flown, would add at least an additional seven percent to the small, individually-owned and operated fleet. These airplanes, flown by nonprofessional pilots, have a higher accident rate than the larger, professionally-flown corporate and business fleet and it is not statistically unfair to calculate the product liability cost burden on a unit basis.

The obvious result is that the small, owner-flown general aviation airplanes which now make up approximately 90 percent of the fleet have been simply priced out of their market in large measure by the product liability cost burden. At present that market is essentially nonexistent.

Beech Aircraft Corporation has ceased to manufacture its entire line of light single-engine airplanes. It has closed its plant in Liberal, Kansas. Beech has placed the plans and tooling for those airplanes on the market, but has found no purchaser.

Over the past three years, employment in the general aviation industry in the State of Kansas has been reduced by 50 percent, and the lay-offs continue. It is my opinion that there is nn reasonable prospect, with product liability cost burdens at their current level, that the industry can recover to its position during the three decades following World War II in terms of employment, unit sales, reasonable prosperity and technical advancement.

The impact of this situation on technical advancement in general aviation is obvious. Manufacturers such as Beech, Cessna and Piper who have plants and equipment designed to supply a demand of 10,000 units or more of smaller, owner-flown aircraft must struggle to stay alive in a market suddenly contracted to sluggish corporate and government purchases of larger, turbine-powered aircraft. Limited funds for research and development of improved products will, of necessity, be directed toward that narrow market. The improvement of the owner-flown aircraft categories of airplanes is now and will continue to be halted. The aging fleet of owner-flown airplanes will, rather quickly, produce a safety hazard which will be reflected in increased product liability cost burdens. Indeed, it is my opinion that this cycle has already been set in motion.

Beech Aircraft has studied the product liability exposure situation intensely. A detailed statistical analysis performed in 1978 revealed that the product liability tort litigation system is dreadfully inefficient. Of the money spent by manufacturers to insure and defend their products, 80 percent was consumed within the system; stated another way, for each dollar spent by manufacturers in insuring and defending their products, less than 20 cents ever reached the hands of someone injured or the survivors of a person killed in a general aviation accident.

The survivors of persons killed or persons injured as the result of poorly designed or manufactured products should not be without a remedy and no one suggests that they should, but to maintain a system as unmanageable and inefficient as the product liability tort system has proved to be is an extravagance that neither the industry nor the nation can now afford. The present system, which permits and even encourages unrestrained, unjustified and costly litigation, produces exorbitant awards for a few, inadequate awards for some and no award at all for many who are truly innocent of any negligence or wrongdoing. This is unfair, but it is equally unfair that a greater number of people have lost good jobs as the result of this extravagant approach to a reparations system which has been largely devised and is controlled by courts, lawyers and insurors.

It would be enlightening to calculate at 1985 rates the total cost to the total aviation industry, including air carriers and commercial aircraft builders, of the product liability and operator's liability exposure. It would, in my opinion, approach $1 billion annually. Because of the volatility of these risks, the major share of the risk is underwritten by European insurors and, therefore, a major share of the premium costs is represented by exported dollars, a factor which we as a nation can no longer afford to ignore.

STATEMENT OF CHARLES B. HUSICK, SENIOR VICE PRESIDENT, FAIRCHILD INDUSTRIES, GERMANTOWN, MD

Mr. HUSICK. Mr. Chairman, members of the committee, my remarks carry also the perspective of someone who is both a pilot and a flight instructor, a user of the system and the products.

When I prepared my remarks, I was attempting to answer the question whether the current product liability environment in our country has created a serious detriment to innovation in general aviation. My written remarks are available for your review later. What I would like to clarify for you is the following:

We're living in a no-fault world where no-fault doesn't, in fact, exist, but the courts have created the myth that it may. We're living in a world of strict or, in some cases, even absolute liability—a world in which the state of the art is no defense whatever; a world in which the age of the product, the degree of maintenance of the product, or the modification of that product, or even the negligence of the user bears little or no relation to what happens in the court.

I think where I can be most helpful is to point out some examples where innovation that has occurred in the past has not continued, where cases where products previously available for use are now withdrawn, or products that could be used are not available.

For example, in the early 1970's a number of devices called horizontal situation indicators were introduced to the marketplace. This device, this HSI, is one of the major attributes or major advances in instrument flying, especially for the pilot of a light aircraft who is busy with a number of tasks and has no copilot, no flight engineer.

These HSI's were taken in their design from previously available, more expensive, more complex units. What they required from the user was a greater degree of skill and attention in their management and in their use.

The advantage they brought, however, was roughly a fourfold decrease in the cost compared to their predecessors. They were and they are a real advantage. They have, in fact, reduced the accident rate.

However, it's interesting to note that in the period from the early seventies until now there has been virtually no further development of the products. And I submit that the reason for it overwhelmingly is that the manufacturer of today, faced with the certainty of a product liability claim, because his device was simply present in an aircraft that sustained an accident, is not about to put his company at risk by developing a product and putting it on the market.

Another example: back in the 1950's and sixties the power source that was used to provide a vacuum to operate the gyroscopes in the aircraft—these are attitude gyros and heading gyros, two elements that are very important for safe instrument flight—that power source as an oil-lubricated or wet vacuum pump. Those pumps had their problems. They were replaced over a period of time with an improved product, the so-called dry or carbon vane vacuum pump. This, again, was not a perfect, foolproof, never-fail product, but it offered real advantage.

However, as time has gone on, the failures of those pumps or the alleged failure, or even the possibility that a failure occurred and contributed to an accident, has caused the manufacturers of those pumps to be subject to continuous lawsuits. Now the situation that exists is that the Federal Government itself recognizes and acknowledges that those pumps and the systems they support, the gyros, may in fact fail or malfunction. And if you refer to part 61 of the Federal aviation regulations, you'll find in paragraph 61.65 that the pilot who applies for and is trained to be an instrument pilot, a pilot who flies without outside visual reference, is required to be trained to fly his airplane safely after those devices have failed. He not only must be trained to do it; he has to demonstrate an ability to do it.

That notwithstanding, there are cases on record and case after case where companies have been found liable, product liability cases, because it is alleged that the pump failed and, therefore, an accident occurred. This is irrational.

The case is clear, however, that the same two companies that made carbon vane pumps in the sixties are still making them, and no one else has entered the market, simply because they are not irrational enough to enter that market.

In the case of products that have been withdrawn from the market, let me cite a few examples:

First of all, in the late 1960's our industry was able to purchase alternators, alternators not too different from those used in your automobiles that provide power for running the electrical systems in the aircraft. They purchased those alternators in part from Delco, a division of General Motors. General Motors decided, in their own wisdom, to withdraw their product from use in general aviation. They felt the risk was too great.

In the early seventies we were buying alternators from Westinghouse. Westinghouse reached the same conclusion—the risk was not worth the profit. We now buy alternators from Prestolite and from Ford. Both of those companies are, we believe, considering withdrawing their products from the market.

In the area of heat exchangers, oil coolers, and other devices, at one time we could purchase them from the Harrison Division of General Motors. No more. Many of the heat exchangers used on my colleague's aircraft, Beech Aircraft, are in fact produced in Japan, not in the United States.

In the case of fuel injection, there are devices available today that are used in automobiles driving on the streets of Washington made by the Boesh Corp., electronically controlled fuel injectors. They are unavailable for use in general aviation aircraft engines because the manufacturer has deemed that the risk is too great.

In the case of fuel cells made of rubber, the Goodyear Co., a pioneer in that field, is rapidly trying to withdraw because the risk involved, the product liability risk, is too great.

Mr. Glickman, in your own city of Wichita a small company called the Preonite Co., a producer of molded plastic parts, was producing polyethylene bearings for use in aircraft. No more. The risk is too great.

The Oildyne Co., producing hydraulic pumps used to retract and extend the landing gear on single-engine Cessna aircraft, seriously wants out of the business.

These problems are real. These problems exist. They are not theoretical. They are, in fact, killing innovation in our business. And if there is any reason that the majority of the world's aircraft today were produced in the United States, it's the innovation of our industry that created it. And we're allowing the tort system and its distortion to stifle that.

Moving to the question of foreign competition, and are we in fact in the process of exporting our aviation companies? Gentlemen, we are. Consider the following:

Consider the possibility that the foreign manufacturers play by precisely the same rules in the U.S. market that the U.S. manufacturers play by. And, by the way, that's by no means assured, but let's just make that simplifying assumption.

Consider a foreign manufacturer who sells 60 percent of his product in the largest aviation market of the world, namely the United States, but, conversely, sells 40 percent of his product outside the United States And then consider another company, a U.S. company, that sells 60 percent of its product at home and 40 percent overseas. And, by the way, no such companies exist today.

Those two companies are not equal. The U.S. company will find its products tried in accordance with U.S. distorted law on 100 percent of its sales, but the foreign manufacturer, even if he plays by our rules, pays the high premium only on the 60 percent of the products sold in the United States And on the 40 percent sold out of the United States, he is governed by his own law, a law which is far, far less expensive to defend against.

Simple arithmetic says that manufacturer has a very significant economic advantage. And if you would like living proof of that, look at the increasing sales of two French-made general aviation aircraft: the Trinidad and the Tabago, both made by Aerospatiale.

We have a very serious problem, and if we don't start to control the greed of some of our plaintiffs' attorneys and the tort system, we're going to export our industry.

Thank you.

[The prepared statement of Mr. Husick follows:]

STATEMENT OF

CHARLES B. HUSICK, SENIOR VICE PRESIDENT

FAIRCHILD INDUSTRIES

I am Charles Husick, Senior Vice President, Commercial Aerospace, Fairchild Industries. My company's products include corporate and regional airline aircraft. My career has included extensive work in electronics, avionics and aircraft.

In my opinion, the current product liability environment in the United States is a serious detriment to innovation in the general aviation market. The interpretation of statutes by the courts, the development of case law and the apparent desire of the citizens of our country to obtain absolute protection from the consequences of their own actions frequently make investment in innovation unattractive or economically impossible. U.S. manufacturers in particular face local courts which operate as if a form of no-fault insurance were in effect. The courts create a climate of strict or even absolute liability. In the present product liability environment, the age of the product, the quality of maintenance or degree of modification appear to carry no weight with courts or juries. Under these conditions, innovation, the characteristic of American industry which contributes to our leadership in the world and the growth of our economy -- this innovation is chilled or eliminated. The following examples illustrate the point.

In the early 1970s, a number of low cost horizontal situation indicators were introduced to the general aviation market. These products were not failure free or fool proof, but offered the users a very significant aid to instrument flying at a price which made them practical for a large number of aircraft which could not reasonably afford the more capable and expensive HSIs previously available. These new products required more effort from the pilot for proper function than the more complex and expensive devices. In the product liability environment of today, I doubt that these innovative designs would be placed in production and offered for sale. The almost total lack of new products in this area appears to validate my opinion.

In the 1960s, the then common oil lubricated vacuum pump was replaced by a dry carbon vane design. The new pump afforded substantial advantage, although like its predecessor it was not totally reliable. The pump typically provides the energy source for the operation of the attitude and directional navigation indicators. The U.S. Government recognizes that the pump or other power source or the instruments may fail at any time and therefore requires that an instrument rated pilot be trained to safely manage such an occurrence. The pilot is also required to demonstrate competence in such a situation (reference Federal Aviation Regulations, Part 61, Section 61.65 and the related advisory circulars). Should an aircraft mishap occur, even if only remotely involving the vacuum pump, the evidence is clear that the manufacturer of the pump will be named in a legal action. The courts appear to demand absolute perfection for manufactured devices while excusing the human participant from responsibility for his own actions. That innovation in this area has been stifled is demonstrated by the fact that only two manufacturers produce the product, the same two who have been in the market since the 1960s.

U.S. manufactured heat exchangers, which were once used in aircraft, are no longer available because the U.S. producers have determined that the resulting litigation exposure was unacceptable.

In virtually all cases with which I am familiar, the state of the art which existed at the time of the design of the product carries no weight as a defense. Our products are judged by what we now know, not what we did know -- a scientifically and logically unsound proposition.

Today's aviation environment combines strict liability for the manufacturer with a willingness to disregard the responsibility and negligence of the operator. The economic distortion of the present system drains needed funds from research and development budgets and at the same time causes U.S. companies with valuable products to withhold them from use in aviation. In some instances the annual insurance and litigation expenses exceed the amounts available for product design and development. These expenses significantly increase the cost of U.S. produced products. In some instances we provide offshore producers, who are not faced with the added cost of our legal burdens on the portion of their production sold outside the U.S., with a cost and therefore market advantage in the U.S.

Mr. Chairman, our industry and our country need a rapid return to sanity in the construction, interpretation and application of our product liability statutes.

Mr. Brown. Thank you, Mr. Husick.

Mr. Stimpson. Mr. Sontag?

STATEMENT OF FREDERICK B. SONTAG, PRESIDENT, UNISON INDUSTRIES, INC., ROCKFORD, IL

Mr. Sontag. Mr. Chairman, my name is Rick Sontag, and I'm one of those small business entrepreneurs that we've talked about here today.

My company employs 100 people in the manufacture of magnetos and ignition wiring in the city of Rockford, IL. For your information, magnetos are electromechanical devices that are used in small airplanes for firing the airplane's piston engine. In other words, the magneto is very critical to the airplane's operation. Failure of a magneto could cause the airplane to lose its power and go down.

Recently my company had done considerable research, marketing research and engineering research, on an entirely new kind of electronic ignition product. We decided to scrap that project. The project itself was probably a very significant improvement in both reliability and maintenance expense for small airplanes. Now the reason that we scrapped the project had nothing to do with economics or its technical feasibility. We felt that we had those risks totally in hand.

We were mostly concerned in this particular case with the product liability risk associated with such an innovation. We were afraid to become a pioneer, a technological pioneer, and subject ourselves to some plaintiff's attorney second guessing our decision sometime in the future.

Now that may sound a little crazy to people who are used to entrepreneurs inventing and using their inventions as a source of innovation, a source of product improvement, here in the United States, but let me tell you some of the experiences that our company has had that contributed to that decision of ours.

For example, take an incident that occurred in 1977 in Chicago. Three young men were flying an airplane, took off, had some reported engine problems, a short time later crashed the airplane into an industrial building. One of the men was killed; two of the other men were very seriously injured. And the industrial building, which was used for manufacturing and distribution, was totally destroyed.

We and 17 other manufacturers of airframes, airframe components, engines, and every kind of instrument you can imagine on the airplane were each sued for $23 million total.

In 4 total years of investigative work, both by the plaintiffs and all of their hired investigators, the FAA, the NTSB, and everyone else associated with the accident, it was clearly shown that our product had absolutely nothing to do with the accident. In fact, in a private conversation, the plaintiffs' attorney told our attorney that he had absolutely no case against us. Nevertheless, he said he was going to keep us in the case because we were "too close to the power train of the engine."

Finally, after 4 years of being involved in this litigation, the plaintiffs' attorney allowed us to buy our way out of the case, even though we had no liability, for $63,000. Now that may not be a lot of money to General Electric, but to our little company that's a lot of money. In addition to that, we had to pay our own attorneys over $55,000 just to get to that point.

Now, as you can see by that example, a product doesn't necessarily have to be involved directly in the incident for your company to sustain a lot of monetary damage. You can pay a lot of money and not really be involved in the case.

All you have to have to be involved in a case and pay a lot of money is you have to be on the airplane; your product has to be used on the airplane and someone has to be able to put together a case that can show it could be feasible that your product could contribute to the accident.

It seems these days, in general, from my perspective, that when somebody gets injured or property is damaged, people have the attitude out there that somebody's got to pay for it. Generally speaking, most people think that somebody has to pay for it even at times when the facts don't clearly show that we, as a manufacturer, had a product that had anything to do with contributing to that damage or even at times when it's very clearly shown that the person who was involved in the airplane accident or other damage that occurred was totally responsible for his own actions, and in fact at times may have been totally negligent.

Take, for example, what happened to our company in a case in New York. Back in 1980, we were involved in an incident that concerned a training and maintenance facility in New York City. The training and maintenance facility had bought a new airplane and had the airplane flown back to its location by a professional pilot from Wichita, from Cessna Aircraft Co. The professional pilot in that particular case had reported that he had a magneto problem. Now that airplane had been sitting on a field outside for over 1 year. No doubt that there could have been some things that had problems.

After the pilot reported the technical problem with the magneto on the airplane, the plane was set aside by the facility in a separate place. It wasn't supposed to be used. Unfortunately, some time later a young, part-time employee of that particular facility handed the keys to that airplane to a student pilot and his instructor, who was a professional pilot and had many hours of experience.

On the very first takeoff of that particular airplane, flying into a very high, gusty wind, the airplane stalled in mid-air and crashed and killed both the student pilot and the instructor.

Now due to that particular crash, as well as a whole number o other incidents associated with that particular facility in New York, the city of New York elected to shut that facility down. After the facility was shut down, our company was sued for $20 million by that particular aircraft maintenance and training facility. They allegedly lost profits, lost future profits in this particular case caused by our magnetos causing the crash of that particular airplane, which in turn, therefore, caused the demise of that facility

They also sued the city of New York and many, many others and ultimately there were six different lawsuits and nine differen law firms involved in this particular case.

Now, obviously, using that particular airplane with a reported magneto problem when it had been taken out of service was clearly the responsibility of someone within the maintenance facility. Nevertheless, our company stayed in that particular lawsuit—we were involved in the lawsuit for over 4 years, and had to defend ourselves in every hearing, in every action in that lawsuit, for a total of 4 years.

Finally, at the end of 4 years we were allowed to buy our way out again for $10,000 after we had sustained $46,000 in attorneys' bills.

Now somehow in this particular country we've really lost the concept that people must take some responsibility for their own actions. Now I can remember years ago, when I was a kid, it seemed like people in general recognized that they had some culpability, some responsibility for their own actions. If you went out and cut your foot when you were mowing the lawn, you didn't sue the manufacturer of the lawnmower. You, instead, thought that maybe you were a little bit careless and a little bit crazy to stick your foot next to the lawnmower.

People at that time didn't seek other people to blame for their own stupidity and carelessness, but that is changing today; no doubt, in my opinion.

Can you imagine, for example, just how much progress we would have had in this country if the very first pilot of an airplane, the very first guy who crashed one due to his own negligence, sued the aircraft manufacturer, the engine manufacturer, the Wright brothers, the guy who owned the field he took off from, and everyone else in sight—can you imagine how those people who were technical pioneers in this country would think about the process of innovation in the future if they had been sued?

Now these days, in fact, you can literally be involved in a products liability suit where your product isn't even involved, where your product isn't even a part of the airplane.

For example, early this year we were sued by a Kansas man due to an incident that occurred back in 1983. Now it seems that this man was out hand-propping his plane. If you know what that is, it means that he's out there turning the propeller by hand to try to free up the engine.

While he was turning the propeller by hand, the engine accidentally started. The propeller struck him in the leg, broke his leg, and hurt his son somehow. As a result of that accident, the man was fairly substantially injured.

However, he waited 1 year to bring suit, and he sued our company and Cessna Aircraft in that particular case for his damages sustained in the accident. We got the suit and we spent 2 months of investigation on the suit, both ourselves within our company as well as our product liability attorneys. And, finally, after $5,000 in attorneys' fees and this 2 months' of investigation, lo and behold, we discovered it wasn't even our product. It was our competitor's product, and the guy sued us.

Now can you believe the system that we've created where we've allowed someone to sue a poor little manufacturer like ourselves and bring them into a lawsuit and spend time and money to try to defend themselves in that lawsuit when in this particular instance the man hadn't even taken the time or the efforts within one year to go look at the magnetos and read the label and see our name on them. That's how bad it's gotten.

And to add insult to injury in that particular case, by the way, the plaintiff's attorney, after he had discovered it wasn't our product involved in the case, said, "Wait a second. We're not going to dismiss you from this case unless you guys agree not to sue me because I made a mistake in this particular case." So, finally, we had to agree not to sue the man for his mistake in order to buy our way out of the case.

Now I think, in general, as I look at this issue of products liability, that the case in a way gets summed up very effectively by a California attorney that we dealt with some time ago. In this particular case the attorney owned an airplane, and this attorney had his mechanic replace the magneto on his airplane's engine. Unfortunately, the mechanic wasn't too astute. He used the wrong nut to attach a gear when he installed the magneto on the engine. And the attorney went to take off. And with his plane taxied up on the runway and, lo and behold, one of the magnetos wasn't working. He went back into the hangar. It turned out the magneto had fallen off the engine. He went back to his mechanic and said, "Fix it, mechanic."

The mechanic put another one on. The second time he used the same wrong nut. The second time the attorney went out, back to the field. Once again, the magneto fell off the engine.

It turns out that the attorney decided to sue us. And he sued us for compensatory damages and, believe it or not, $1 million in punitive damages. Now he admitted to us that it was the mechanic that made the mistake; no question in his mind about that. I mean, that guy used the wrong nut clearly. But, he said to us, "You know, my mechanic hasn't got any money. You guys do. And not only that, you didn't warn him not to use that wrong nut. And besides," he said, "this is California and all the products liability laws in the United States in general are modeled after ours." He said, "I can sue you guys for anything here in products liability and win. You go after my mechanic," he told us, "but I'm coming after you." And guess what? He was right. We wound up paying $5,000 to dismiss this case on top of $4,000 in attorneys' fees.

Now these kinds of experiences are very frustrating for a large business, but I can tell you that for small businesses such as ourselves they are totally demoralizing.

After experiences like these, a lot of small businessmen just kind of get exasperated and throw up their hands, and some businessmen that I know, personal acquaintances, have literally gotten out of business. Things like this are just too frustrating.

And, for sure, all of us—every manufacturer of products who's small—is afraid to take a pioneering position when it comes to technological innovation, especially as related to airplanes. That's why our company scrapped our electronic ignition project, and that's why other companies do the same thing. These pioneering efforts, unfortunately, provide an awful lot of cannon fodder for plaintiffs' attorneys.

You know, this country was really built by people with innovative ideas—small businessmen, people not afraid to take a chance.

Independent, free-thinking kinds of people who weren't afraid of the risk of taking a few steps backwards in order to get a full step ahead. In fact, most of our technological innovation in this country has come from small businesses, not big businesses, as you might suspect—the airplane, the light bulb, the Xerox machine, the personal computer, to name a few. And the Small Business Administration itself has estimated that, in general, there are more new jobs in the United States of America created by small businesses such as ourselves than are created by large businesses.

We can't continue to stymie the creativity of these small businesses by allowing this products liability system to degrade the way it has currently. We need a more equitable system than we have today. This system that people have today of thinking that somebody has to pay for damages irrespective of fault has got to change to something more like the responsible party has to pay for those damages.

The legal profession and the judiciary both have been unable to police themselves to make these changes, and the changes have to come through Congress, in my opinion.

And rest assured, as Mr. Husick said here, if we can't change our products liability system here in the United States to allow our small businesses to innovate and to develop those products that we'll need in the future, I'll guarantee more future innovations are going to come from overseas. Most of these foreign companies that we have been talking about here today don't have the products liability experience or the products liability base that holds them back the way that we do.

So as we slowly strangle our own technology, believe it or not, we're going to create more openings for these foreign manufacturers.

Mr. Chairman, as an entrepreneur, small businessman here in the United States who would like to get on with the business of helping this country build America, I know I speak for all the small businessmen in the United States when I say that we need your help in this process.

Thank you very much.

[The prepared statement of Mr. Sontag follows:]

STATEMENT OF

FREDERICK B. SONTAG

PRESIDENT, UNISON INDUSTRIES, INC.

My name is Rick Sontag. I'm President of Unison Industries located in Rockford, Illinois. We employ 100 people in the manufacture of magnetos and ignition wiring for small airplanes. Magnetos are the electromechanical devices that produce the ignition spark to fire a small airplane's engine.

Recently, my company scrapped a year's worth of marketing and engineering research on a totally new electronic ignition product. The product would have significantly improved the performance and maintenance expense on today's piston aircraft engines.

The reason we did so was not economic or technical. We felt we could handle those aspects. We were mostly concerned with the potential product liability risk of such an innovative product. We were afraid of becoming a technological pioneer and potentially subjecting ourselves to some plaintiff's attorney second guessing our decisions in a lawsuit.

That may sound crazy, but let me relate some of the everyday products liability experiences which contributed to our decision.

Take, for example, a 1977 Chicago incident involving 3 young men who crashed their airplane shortly after reporting engine difficulties. The plane struck an industrial building, killing one of the men, seriously injuring the others, and destroying the building. We and 17 other companies who manufactured components for the airplane were each sued for $23,000,000.

In 4 years of investigative work by the plaintiffs, the FAA, and the NTSB, it was clearly shown that our product had absolutely nothing to do with the accident. In fact, the plaintiff's attorney told us privately that he had no case against us. Nevertheless, he refused to let us out of the lawsuit for over four years. We finally had to "buy our way out" by paying the plaintiff $63,000 as a settlement. By then we owed our own attorneys over $55,000.

As you can see, your product does not need to cause damage or injury in order for your company to end up paying a lot of money.

It seems these days that when someone is injured or property is damaged, people feel that "someone has to pay for it." At times that means someone paying for it even when the facts do not show he is liable for it. Or even when the facts clearly show that the injured person was really responsible for his own injury.

Take, for example, what happened to our company as a result of an accident in New York.

In 1980, a young part-time employee of an aircraft training and maintenance facility mistakenly allowed a student pilot and his instructor to fly an airplane which was not supposed to be flown. The plane had had magneto problems and had not yet been serviced. On the first takeoff, the plane crashed, killing the student and instructor. Due to the crash as well as years of similar operating problems, the City of New York closed down the training and maintenance facility.

Our company was sued for $20,000,000 in "lost profits" by the maintenance facility, who alleged that our magnetos caused the crash which caused the company's demise. They also sued the City of New York and many others. Ultimately there were 6 different lawsuits and 9 law firms involved. Using the plane with the magneto problems was clearly the responsibility of the maintenance facility. Nevertheless, our company eventually paid $10,000 for our dismissal from the suits after 4 years and $46,000 in attorney's bills.

Somehow, we have lost the concept that people must take some responsibility for their own actions. Years ago people recognized that they had some culpability for damages and injuries caused by their own decisions. They didn't seek other people to blame for their own stupidity and errors. But today that is changing.

Can you imagine how much progress we would have had in this country if the first pilot to crash an airplane due to his own negligence sued the airplane manufacturer, the engine manufacturer, the Wright Brothers, the owner of the field he took off from and everyone else in sight? How much incentive would these pioneers in technology have had to continue their exciting developments?

These days you can even be sued in products liability when your product is not at all involved. Early this year, for example, we were sued by a Kansas man for a 1983 injury he sustained while turning his plane's propeller by hand. After $5000 in attorney's fees and 2 months' investigation, it turned out that he had our competitor's magnetos on his airplane -- not ours! In the one year since the accident, he hadn't even taken the time to read the labels on the magnetos before he sued. And his attorney added insult to injury by not agreeing to dismiss us from the suit unless we agreed not to sue him for his mistake.

Perhaps the state of affairs in products liability is best summed up by a California attorney whose airplane engine was damaged by a mechanic who mistakenly attached the magneto to the engine using a wrong nut. The attorney sued us for compensatory damages and $1,000,000 in punitive damages. He admitted his mechanic had made a mistake.

"But," he said, "my mechanic hasn't got any money. You do. You didn't warn him not to use the wrong nut. And besides, this is California. All the products liability laws in most states are modelled after California's, I can sue you for anything here. And win. You go after my mechanic if you want to. I'm coming after you."

Guess what? He was right. We wound up paying him $5,000 to dismiss the case, on top of $4,000 in fees for our attorneys.

These kinds of experiences are frustrating for large companies, but for small companies such as ours, they are totally demoralizing. After experiences like these, many entrepreneurs and small businessmen throw up their arms in exasperation. Some even quit business altogether. For sure, all, including our company, are much more cautious about taking pioneering positions. That's why our company scrapped our electronic ignition project. Pioneering efforts provide too much cannon fodder for plaintiff's attorneys.

This country was built by people with innovative ideas not afraid to take a chance. Independent free thinkers who were willing to risk a few steps backward in order to make a bold step forward.

Most of the major technological innovations in America have come from these small business entrepreneurs -- not big business. The airplane, the light bulb, the Xerox machine, the personal computer to name a few. And the Small Business Administration estimates that more new jobs in America are created by these small businesses than by large businesses.

We can't continue to stymie the creativity of these small businesses by allowing our products liability system to degrade. The current system must be replaced by a more equitable one. The theme "Somebody has to pay for it" has got to change to "The responsible party must pay for it."

The legal profession and the judiciary have been unable to police themselves to make these changes. So the changes must come from Congress.

Rest assured, if we can't change our products liability system to allow our small businesses to innovate, more future innovations and products will be made overseas. Most foreign companies have little products liability experience or history to hold them back. So while we slowly strangle our technology, we will create bigger openings for foreign competition than the ones we now fear from unfair foreign trade practices.

As an American entrepreneur who would like to get on with the business of building America, I know I speak for all entrepreneurs and small business-men when I say we need your help.

Mr. BROWN. Thank you very much, Mr. Sontag.

Thank you very much to all of you who have given us some very specific information relative to this problem.

Mr. Glickman?

Mr. SONTAG. Thank you.

First, I want to thank all the witnesses for excellent testimony. I've been working with Ed Stimpson for some time on trying to develop some legislation in this area, and it cannot be done unless the problem is out on the table and unless there is a thorough understanding of the implications of the problem.

One of the reasons that the product liability legislation that has been around here for some time hasn't moved is because there has not been a top-to-bottom understanding of the problem by those in industry, those users, and those who may lose their jobs. It's been viewed kind of as a management problem. And since it's had a narrow focus, it hasn't had very much popular appeal or support, and at least these hearings I think will get the problem out on the table, at least as it reflects the aviation issue. And maybe we can move to deal with the problem legislatively, either specifically to aviation or as it would relate to other issues as well.

I would just—first, I want to—I think that Mr. Husick and also, Mr. Sontag, your specific references to technological developments and what would or would not have happened, given the absence of the current state of the law, I think is very relevant for the testimony, as is yours, Bob, as it relates to the job-related activity.

I think this is a jobs issue. We've talked about this before. I don't think it's been phrased as a jobs issue. I don't think people understand it relates to the average working person's capability to continue employment in this country, to a large extent. And we've got to get it out of the boardrooms and into the workplace in order to get a feel that this is a—the whole product liability issue is one that has a great deal of importance to it.

I would make one comment. My experience around here tells me it doesn't help to polarize, and I think Mr. Brown, as an attorney, as am I, as are I know there is at least one attorney in the group across the board here. I don't think it does a lot of good in product liability to talk about the greed of lawyers. I think that, for the most part, the lawyers are like everybody else in this world—they want to make a living and they'll take advantage of the existing institutional framework to do that. That's true of a businessman; that's true of a working person or anybody else.

And I think by slapping labels on the plaintiffs' bar, we make it all the more difficult for us to get reasonable legislation through. And there may be defects in the litigation system of this country, and that's one of the reasons that we're going to try to fix these defects in compensation legislation that's more realistic, but I would urge those who are interested in this legislation to try to develop a consensus and work cooperatively and try to bring forward the strengths and positive things that legislation can do for this country, rather than slapping on the plaintiffs' bar, because these—it's just going to—you're just going to get their dandruff and their dander and everything else that they've got up, and it's going to make it all the more difficult to pass legislation.

Thank you, Mr. Chairman.

Mr. Brown. It's far safer to criticize Congressmen than it is the plaintiffs' bar. [Laughter.]

Mr. Lewis?

Mr. Lewis. Thank you, Mr. Chairman.

I'd like to ask you—gentlemen, you heard Mr. Brennan's testimony and his statement about the NTSB maybe not making thorough investigations of accidents. Do you have any comments on that?

Mr. Martin. I have detailed knowledge of Beech's investigation system. We investigate every accident, not only in the United States, but worldwide. We have employees who are full-time investigators. They are engineers and pilots. They're required to be before they can be on the investigation team.

We have no problems with the NTSB. They cooperate with our investigators. I think Mr. Brennan is correct in saying that the NTSB is suffering from—as is the FAA—from inadequate financial resources in the investigation area, but I think that the manufacturers who participate in the investigations ease that somewhat. At least in Beech's case I know they do, and I think Cessna and Piper and the main components manufacturers follow a similar system.

The NTSB has a rule that says that insurance investigators will not become a part of the investigation team. And Mr. Brennan's firm had a related firm which was—he's correct, they had competent investigators, not more competent than Beech's or Cessna's, in my judgment, or several of the other people who do participate. But the NTSB recently has seen fit to enforce that rule across the board, and I respect Mr. Brennan. He and I are friends of long standing. I have great respect for him and for his company, but I disagree with him. I think that the NTSB was correct in saying, if we're going to enforce that against some insurance companies, we have to enforce it against all.

I think the NTSB, with limited resources and facing a difficult job—accident investigation work is hard work, not pleasant work. And you encounter a different problem every time. I think they're doing a pretty good job, and about a good a job as can be done.

Mr. Lewis. I'd like to ask Mr. Husick: how is product liability handled in a joint venture such as the Saab-Fairchild program that you're now working? How do you determine your insurance rates?

Mr. Husick. That's primarily based upon the projected exposure. In the case of a new aircraft, which the SF-340 clearly is, product liability costs in the beginning of the program are not terribly high because there isn't a large exposed fleet of aircraft involved. The rate tends to be set largely on the expected number of units that will be in service in the United States or units which will be subject to U.S. law in the event a mishap occurs.

Because the joint venture has until now been a 50-50 partnership, that joint venture has operated as if virtually the entire fleet was of U.S. origin. And, therefore, the product liability insurance, although not terribly high in monetary value at the monent, is very high in terms of percentage.

Mr. Lewis. Would it be—would the U.S. rates be lower?

Mr. Husick. No. The U.S. rates are much higher.

Mr. Lewis. Much higher?

Mr. Husick. Much higher. And if we, for example, took—rather than the SF-340—if we took two comparable single-engine aircraft, let's say—one produced in either Vero Beach, FL, or Wichita, KS; another produced in France; and let's just take the case and say that both of those companies sell a product into a third country. We'll use as an example the third country Australia. The American company would pay a higher amount in product liability insurance certainly than the French company would, because the French company, after all, is governed first by French law and then secondly by Australian law, either of which is less severe than the current interpretation of U.S. law.

Mr. LEWIS. I see.

Mr. HUSICK. If I may add one comment I didn't make earlier, it might interest you to know that in the case of our own aircraft company in San Antonio, TX, today, we are spending substantially more in liability insurance and the cost of litigation than we are in our entire research and development program.

Mr. LEWIS. Thank you.

Mr. Sontag, you gave us some excellent testimony, but I notice in all of your testimony you buy your way out of the cases. Wouldn't it be cheaper in the long run, better for the small business overall that you're talking about, to fight some of these frivolous cases to the final end?

Mr. SONTAG. Mr. Lewis, yes; and in some cases we do fight them to the end. In the particular cases that I cited, though, the cost of staying in the litigation was potentially so much higher than the cost of buying our way out that we were forced to settle out.

For example, in the case that I cited in Chicago, where we had no liability whatsoever, there were $23 million worth of damages, and ultimately there were only 18 defendants near the end of this suit when it was getting ready to go to trial. Since Illinois has a joint and several liability law, our company very easily—especially since this is a Cook County case, which is known as a very liberal community—our company very easily could have been 1 percent liable for that particular accident, and found 1 percent liable by the jury, even though we really had nothing to do with it. It happens very frequently. As a result, we could have been facing at least $200,000 in settlement by the end of the case, in addition to the additional attorneys' fees. And in our particular case, for small businesses it's even worse because some of the larger companies—large to me is Beechcraft. For Beechcraft, large to him is Boeing.

Some of the larger companies self-insure the first portion of their liability insurance, and, therefore, they have a lot more control over the direction of the lawsuit at the very beginning. In our case we insure from the first dollar up, meaning the insurance underwriter really is technically in control of the litigation. We have an understanding with the underwriter that our input is the major input that they use in fighting the case, but when it comes down to dollars and cents, where we're facing the risk on this particular example I gave you of $200,000 loss maybe or more, if it's joint and several liability judgment, the insurance company very heavily favored settling this thing out, and so we really didn't have a lot of alternatives.

Mr. LEWIS. Well, I'd also like to cite the case with the Kansas man that didn't know the type of magnetos that was on his aircraft.

Mr. GLICKMAN. For the record, that's a rarity. Most of our people do know the difference. [Laughter.]

Mr. SONTAG. I think he was from Iowa actually living in Kansas for a short time. [Laughter.]

Mr. LEWIS. No offense to the gentleman from Kansas or to Mr. Sontag, but wouldn't you do well to sue him for his mistake, to point this out, make this a point of case record?

Mr. SONTAG. In that case—excuse me—in that case, it was the same thing again. In that particular instance, the attorney who represented the underwriter for us—that we have a close relationship with—told us how many more hearings we'd have to go to to get the suit dismissed and how much more we'd have to spend. It was in our financial interest, and in that case the insurance underwriter's financial interest, to settle it immediately and agree not to sue the man as opposed to going to the next hearing and pay more attorneys' expense. And that's—it was done strictly for expediency and for low cost. I mean, it had nothing to do with fault.

We have at times pursued other cases all the way. We're in a case currently where we feel we have no fault, and we're pursuing this one to the conclusion. In general, our policy is, if we investigate the incident and we investigate the product, if it's clearly our responsibility, we make a settlement with the individual and compensate him as soon as possible, and we try to work out a settlement immediately. If it's clearly not our fault, we'll fight it usually all the way to the end, except in some of these instances I talked about where the financial risk is too great.

In the gray areas, we will usually fight until we determine who's at fault or until there is a theory put forth, and if we're clearly shown not to be at fault, we'll continue to fight. If we're clearly shown to be at fault, then we'll try to settle the issue.

I think most companies who are in this business probably take a very similar position relative to suing.

Mr. LEWIS. I have one final question. Isn't there always an inherent risk with innovative ideas and products, new products? How do you deal with this? Now you said, made the statement that they would be coming from Europe. You had to give up on your electronic ignition system. But how do we—how do you feel we are going to deal with this? Should the consumer take the risk, pay for this, or how do we do this?

Mr. SONTAG. I think, in order to——

Mr. LEWIS. Before you start, I think the magneto is a hell of a fine unit on an airplane, and that's why it has two—in case one fails. [Laughter.]

Mr. SONTAG. Boy, I don't know how to answer that. I have to recover for a second.

Generally, I think that most small manufacturers in particular are people who are—who like to move quickly and like to innovate and do things different have probably a different view of their wanting to innovate when it comes to aircraft types of products as differentiated from a lot of other products around the United States.

Our company, our people in our company as well as other small manufacturers in the aircraft business, look on innovation as potentially a serious risk. And the trouble is that a small guy in particular usually gets compared with all those large companies who ostensibly have much more resources and haven't taken that jump forward technologically. That happens in the courtroom frequently, and it gets used against us.

In a lot of other products where they're not as heavily involved in products liability, like the production of soap, let's say—it's very easy to be innovative because you don't have to worry about those risks. So what I'd say is that it's almost a function of the product liability risk of the product in this particular case—how you make a decision, whether you want to innovate and be the first guy in.

Some cases of the manufacturers who don't have the liability exposure, they're willing to do it quite easily. In our case, not only our own company, but also our component suppliers are very, very cautious about innovating. And, in fact, by the way, for the record, we have the same problem that Beechcraft has, and that is that over the years our component suppliers for our magnetos have gradually stopped producing for us and wanted to get out of the business. And today, as a result of that feeling by our component suppliers, we make almost 100 percent of everything that goes in that magneto. You can't find people to produce product for you.

Mr. MARTIN. May I volunteer a piece of information?

Mr. LEWIS. Yes.

Mr. MARTIN. We didn't get into this problem quickly. It's taken us a decade and a half to get here. We're not going to get out of it quickly. When I say "we," I mean the U.S. industrial system.

What general aviation represents is a demonstrated case of liquidating our industrial base through our courthouse doors. Now I agree with Mr. Glickman—we're not here to—and shouldn't be—to try to assign fault. The courts and the lawyers, and to some extent the insurers, have simply gone astray on this. It's gone too far.

Now general aviation, and perhaps aviation as a whole is, as I think Mr. Brennan said, a microcosm of the industrial base of this country. It is already federally regulated. There's only 200,000—in round numbers, 200,000—general aviation airplanes out there. We're not making a market-basket item. Yet, we employ a lot of people.

What I think this group would like to recommend to you seriously is that you look at this industry and let's find some ways step by step to correct this problem. The Federal Government is already in here. I think it should take it over and should limit the liability exposure, and let's go step by step and see if we can correct this problem. If we can correct it for general aviation, or maybe aviation as a whole, that may give us some guide as to what to do about other manufacturers who have a similar problem that do not have the Federal regulatory base and the absolute interstate commerce base that this industry has.

And if you don't help us, we're going out of business eventually. So we might as well—but I think it's a step-by-step process. There are a half a dozen things that a bill could do for us now that would stop the escalation of these costs and begin to bring the judicial legal system back under control as to aviation. And if it works, then you'll see the way to help the rest of the industrial base without compromising compensation to people who really are blameless and are injured by events over which they have no control. No one urges that.

Mr. LEWIS. Thank you.

Thank you, gentlemen.

Mr. BROWN. Thank you very much. You've been extremely helpful to us, and I hope this will be the start to make that correction that you have suggested.

On our last panel this morning are representatives of the general aviation users: Mr. John Yodice, general counsel for the Aircraft Owners and Pilots Association, and Henry Ogrodzinski, Experimental Aircraft Association.

Gentlemen, it would be helpful if you summarize your testimony as much as possible since we are running a little late, and your full testimony, of course, will be made a part of the record at this point.

STATEMENT OF JOHN S. YODICE, GENERAL COUNSEL, AIRCRAFT OWNERS AND PILOTS ASSOCIATION, FREDERICK, MD

Mr. YODICE. Thank you, Mr. Chairman.

I am John Yodice, general counsel of the Aircraft Owners and Pilots Association, and I'm happy to take advantage of your suggestion that we submit our testimony and perhaps highlight some parts of it.

As probably comes as no surprise to you, many of the points which I intended to make in my testimony have already been made. Perhaps I ought to just start off by suggesting that our association is a nationwide membership association of some 265,000 members, and we estimate that our members own two-thirds of the fleet that you just heard about, the 210,000 active civil aircraft that are operating in our system. So we're very much impacted by the product liability problem.

Now we do have, I think, a unique vantage point in the sense that we have competing interests. We have a foot in each camp. On the one hand, we are interested in safe, reliable products at reasonable costs. At the same time, we wish to insure a fair compensation system for any of our members who are injured by defective products. So I suggest that does put us in both camps.

As you have heard, the costs of aircraft and the costs of aircraft components have increased dramatically over the past several years, putting the cost of new aircraft out of the reach of many of our members, and I suggest, also, preventing many would-be aircraft owners and pilots from coming into the industry.

And, as you have heard, a good part of those costs are attributable to product liability problems, product liability concerns, and we do not doubt that the manufacturers are genuine in their expressions to you of their concerns about the product liability problem, and that it has a significant impact on the cost of aviation products.

At the same time, we are mindful that there will be reform. We expect that there will be reform. We want to participate in that reform in order to protect our members' interests in both spheres, and to that end we are already participating with the general aviation manufacturers in exploring the possibility of Federal legislation that might help solve this problem.

I share Mr. Martin's concern that it is a problem that we will not solve easily or quickly, but it's one that we must start on as soon as is practicable.

Now in our testimony I also suggested to you two instances where our association in its own affairs has been impacted by the product liability problem. In one instance we were providing a subscription service for aeronautical charts to our members. We have since abandoned that because we were unable to obtain product liability insurance at an economic rate that would help us sustain that subscription service and not put costs out of sight.

We had a similar problem in connection with ultralights. I know that this committee is familiar with the AOPA Air Safety Foundation, which is funded by the members of the Aircraft Owners and Pilots Association. At the invitation of the FAA, we structured programs to help insure safety in ultralight aviation. We recently had to transfer those programs to another foundation, again for the reason that we were unable to get product liability insurance at economic rates.

That's the substance of the testimony which I have submitted. I'd be happy to respond to any questions.

I'd like to thank you for the opportunity to be here. I sat in fascination while I listened to the other witnesses, and I think this has been an excellent hearing.

[The prepared statement of Mr. Yodice follows:]

STATEMENT OF JOHN S. YODICE, GENERAL COUNSEL

AIRCRAFT OWNERS AND PILOTS ASSOCIATION

TESTIMONY

My name is John Yodice, and I am General Counsel to the Aircraft Owners and Pilots Association. We appreciate the opportunity to present to you our views on aviation product liability and its impact on the use of new technology.

The Aircraft Owners and Pilots Association is a nationwide non-profit membership association of some 265,000 individual aircraft owners and pilots. We estimate that our members own approximately two-thirds of the active general aviation aircraft in the United States, and do seventy-five percent of the flying.

The product liability situation has significant impact on our members as aircraft owners and pilots. From the great deal of correspondence that we receive from our members it is clear to us that we have interests on both sides of this debate. On the one hand, we have an interest in ensuring a fair compensation system for our members who may be killed or injured by defective aviation products. On the other hand, we have just as strong an interest in the availability to our members of quality, and safe aviation products at reasonable cost.

The costs of aviation products have risen dramatically in the recent past. Our technical staff tells us that, in the last ten years, aircraft prices have risen almost twice as fast as the consumer price index. Between 1974 and 1984, the CPI rose 123%. The average list price of a single engine, fixed gear airplane rose 257%. Based on the CPI, the average, fixed gear single, which cost $18,900 in 1974, should have cost $42,200 in 1984. Instead, it cost $67,500 -- about $25,000 more than if the price increases were due solely to inflation.

These rising costs have put the purchase of new aircraft out of the reach of many of our members. The market in used aircraft is brisk. As the manufacturers will probably tell you, sales are off 87% since 1978. The industry is languishing in its worst slump since the late 1940's and early 1950's. And, these rising costs are putting flying out of the reach many would-be pilots.

We are told by the general aviation manufacturers that a significant part of this increased cost is due to product liability. Beech Aircraft President James Walsh estimates that costs associated with product liability will add an average of $70,000 to each Beech aircraft delivered this year. The estimates of the product liability costs to Cessna Aircraft this year are between ten percent and thirty percent of the aircraft sales price, according to Cessna Chairman Russell W. Meyer, Jr. We are told that the product liability cost for the smaller, owner-flown aircraft, which most of our members fly, is higher than that of the larger business aircraft, which our members also fly. The product liability costs of Teledyne-Continental Motors, a principal supplier of light aircraft engines, were $6,000,000 in 1984, when Teledyne delivered 1,200 engines. This averages out to $5,000 per engine. This is in contrast to the 1960's when product liability costs were insignificant.

Of particular interest to this subcommittee is the fact that product liability concerns are a major barrier to technological innovation. This has certainly been true at the light end of the market, particularly ultralights and homebuilts. Moving up the spectrum, we have noticed a very slow introduction of new technologies into general aviation airframes and engines. The end of the Piper Aerostar production has been attributed, in part, to high product liability costs. The manufacturer's concerns are hightened now that at least two states, California and New York, admit evidence against the manufacterer of its efforts to improve its product. You are probably aware of the case of Boeing Airplane Co. v. Brown, decided by the United States Court of Appeals for the 9th Circuit in 1961. This is an action against an aircraft manufacturer for using an allegedly defectively designed alternator shaft which caused a plane crash. The Court of Appeals upheld the admission of evidence of subsequent design modification for the purpose of showing that design changes and safe guards were feasible. Such decisions are a deterrent to the introduction of new technologies.

We are mindful of the pressures for reform of the tort system in the United States which presumably is the root of these product liability costs and the slow introduction of new technologies. We have attempted to stay close to these reform efforts, to ensure that any changes will serve our members best interests from both points of view. Right now we are working with the General Aviation Manufacturers Association to determine whether Federal legislation can be framed to meet both of our objectives.

In addition to the direct interests of our members, our Association has encountered the product liability problem in the conduct of its own affairs.

Our Association recently ceased an aeronautical chart subscription service to its members due in large measure to the Association's inability to obtain product liability insurance coverage at an economic cost. We are confident that this was due to a 1985 decision of the United States Court of Appeals for the 9th Circuit in Brocklesby v. United States. In this case, Jeppesen and Company, a publisher of aeronautical charts, was hit with a thirteen million dollar judgment because it had published a defecitve aeronautical chart. The inaccuracy in the chart was not due to Jeppesen.

According to the opinion of the court:

> The Jeppesen chart involved in this case accurately portrayed the instrument approach procedure provided by the government. All of the defects in the Jeppesen chart stem from the governments alleged failure to establish a safe instrument approach procedure.

The case also held that a Jeppesen aeronautical chart is a "product" that can be considered "defective" because of the information it accurately portrays.

We encountered a similar problem with respect to Ultralights. Ultralights are a relatively new kind of airborne vehicle which is lighter and less expensive to operate than conventional general aviation aircraft. The Federal Aviation Administration determined that the Ultralight industry should be self-regulated, and the FAA invited programs for approval which would provide for the registration of Ultralight vehicles as well as the competency and registration of pilots and the airworthiness of the vehicles. The AOPA Air Safety Foundation, which is principally supported by the members of the Aircraft Owners and Pilots Association, structured programs to provide for self-regulation, and these programs were approved by the Federal Aviation Administration. Unfortunately, because of the growth of product liability exposure, it became impossible for the AOPA Air Safety Foundation to obtain liability insurance coverage at reasonable cost for these programs. As a result, the Foundation transferred these programs to a separate Foundation which, we understand, has limited assets and is going uninsured.

In conclusion, we are pleased to participate with this Subcommittee in an exploration and definition of the product liability problem as it affects technological innovation in general aviation. We look forward to working with all responsible interests in seeking solutions. We don't see that the problem will be solved very soon or very easily.

Mr. Brown. And we thank you, Mr. Yodice.

Obviously the time is approaching when we're going to need to call upon all segments of the industry to work together in solving these problems. You may be before us in the future as we seek to do that.

Mr. Ogrodzinski?

STATEMENT OF HENRY M. OGRODZINSKI, DIRECTOR OF CORPORATE COMMUNICATION, EXPERIMENTAL AIRCRAFT ASSOCIATION, OSHKOSH, WI

Mr. Ogrodzinski. Mr. Chairman, members of the committee, I, too, will simply outline our testimony today.

I'm here representing the Experimental Aircraft Association, which is a membership organization of some 100,000 people who have a passionate love for the freedom of flight. The EAA was founded approximately 33 years ago, and since then it's promoted safety and efficiency in aviation and the accessibility of aviation for all Americans.

You've heard a lot of talk this morning about the recession in aviation and about the death of the light end of the market, light planes. That may be true, but the interest in aviation is certainly not dead. And I'd like to very quickly review some of the statistics of this year's EAA convention.

This year over 750,000 people came to Oshkosh, WI, to attend our convention. Fifteen thousand airplanes came into Oshkosh, WI, this year to attend our convention. They represented every State of the Union and 66 different foreign countries. The convention accounted for over 64,000 aircraft movements in 8 days. That's more than four times more than occurred during those 8 days at Chicago's O'Hare International.

Among the people who attended the convention, of course, were Federal Aviation Administrator Donald Engen; a number of NASA astronauts who are also EAA members; John Testrake, the EAA member who captained the hostage TWA aircraft.

The convention is one of the areas which has been affected by today's liability and insurance crisis. Although our safety record is very good and we are extremely well organized, our insurance premiums in the past year have jumped by some 300 percent, and that's for $5 million less liability coverage than we previously enjoyed.

Quite frankly, we were told that it was a take-it-or-leave-it situation when it came to the insurance, and in the future even that may not be available.

Insurance is rapidly becoming unavailable and unaffordable for many of us in aviation, and I'd like to briefly cite some additional examples.

Many of our EAA members indulge in what some would call a unique hobby—building their own airplanes. In fact, today there are some 11,000 amateur-built aircraft flying in the skies of this country. These handcrafted, privately owned airplanes are on par in terms of safety with their commercially manufactured counterparts. However, home-builts clearly reflect the cutting edge of aeronautical technology. Many of them are much faster, much more fuel efficient, and have far greater range than their comparable commercially built aircraft. In fact, many of the innovations in aviation today come from the amateur-built movement.

We have been able to take advantage of recent technological breakthroughs whereas many of the major manufacturers have been unable to do so because of the fear of product liability suits.

It's an extremely sad commentary on the state of the industry when one realizes that our EAA members during this past year in their back yards, basements, and garages built more airplanes than the entire U.S. commercial airplane manufacturers put together.

Nevertheless, amateur builders also face their own insurance and product liability woes. Burt Rutan is a technological pioneer who designed a new type of canard aircraft made entirely of composite materials. His airplane—one of his airplanes is now a U.S. Air Force jet trainer. He has also designed the only airplane capable of flying around the world nonstop and nonrefueled, a journey which will take some 12 days. He's also designed and built the beautiful new Starship that the Beech Aircraft Co. has been heralding as the beginning of a new era in aviation.

Unfortunately, Burt Rutan has recently said that he will no longer sell plans to his aircraft to amateur builders, nor will he license suppliers. Burt Rutan made his name in the amateur-built movement and was a steadfast supporter of it. Unfortunately, because of unreasonable and unwarranted product—the fear of unreasonable and unwarranted product liability suits, he is leaving the area.

John Monnett is another manufacturer who produces high technology kits for America's aircraft home builders. They are of his own design. They're very efficient. They fly well. They're quite attractive and popular. Unfortunately, again because of product liability costs, specifically the cost of insurance, he has left the field. He has sold this brand-new high tech company to a British corporation.

And we heard about the fear of foreign corporations. Gentlemen, I would like to say that this year, during the past 12 months, I personally have discussed American aviation with business teams from Switzerland, Germany, and Japan—they're all engine manufacturers who would love to get into our market—and with Germans, Israelis, and French airframe builders who are also very interested in getting into the light plane market in the United States. It is certainly not a paper tiger in this case—the threat of foreign competition, that is.

Many of the high technology designers and builders of amateur aircraft are facing these same problems. One of the most respected members of our organization, who is also a designer of amateur-built aircraft, tells us that in an indepth study he has found that 30 percent of the price of his aircraft kit is directly related to product liability insurance costs. That's 30 cents of every dollar that the consumer pays for that particular airplane.

This manufacturer expects $4 million in sales during the coming year. His insurance company is demanding a product liability insurance premium of $700,000. That's roughly two and a half times his annual profit. You don't have to be an accountant to find out where he'll be going in the very near future.

That coverage, by the way, is only for $5 million. Last year the same manufacturer was able to obtain $25 million of coverage for a $167,000 premium.

Because the insurance is so outrageously expensive, many manufacturers, designers, suppliers, and others in the amateur-built movement and the lower end of general aviation have been either forced out of business or they are forced to go naked into the jungle without the comfort or the protection of liability insurance.

We talked earlier today about some suppliers and the problems they were having. One of the aircraft owned by our nonprofit foundation is a B–17 bomber from World War II. In the course of a routine inspection, we found some corrosion in its enormous tail. In trying to repair the corrosion, we found that a major aluminum supplier would not sell us the aircraft quality aluminum that was necessary to repair it because the supplier did not want to take the liability risk of having his product utilized in an aeronautical application. Eventually, we got around the problem and repaired the tail, but not without a great deal of difficulty.

Many suppliers are now saying to aircraft builders, restorers, and repairers that "If you want to buy our products, please don't tell us that you're going to use it on an airplane. That will increase our product liability costs."

It was an honor to testify before this subcommittee in August of 1983. At that time we discussed our extensive auto fuels research and development program. Since then, the Federal Aviation Administration has allowed the use of automobile fuel in some 400 light airplane models. That was based upon our research and development and engineering testing. This is extremely important because 80 octane av gas is rapidly being phased out by major refiners, and the only alternative fuel, 100 octane low-lead av gas, is harmful to 80 octane engines. Most importantly, auto fuel is much less expensive than av gas, by 60 cents per gallon generally, and this means that pilots using auto fuel are able to fly much more often, thereby increasing their proficiency and their safety.

Today over 21,000 airplanes have been issued FAA supplemental type certificates and are legally flying across this country efficiently and economically on automobile fuel. However, there is a problem. Although there are over 6,000 public airports in this country, only 400 provide automobile fuel to their customers who are able to use it in their aircraft. The answer is easy and apparent; they fear product liability exposure.

Their fear of of increased product liability exposure is also translated into the same fears of the engine and airframe manufacturers who have refused to acknowledge the fact that unleaded car gas is a perfectly acceptable substitute for 80 octane av gas. As a result, many airport manufacturers and fixed-based operators are reluctant to provide auto fuel to their customers who are eligible to use it, product liability being the most important aspect of their fears to do so.

Clearly, under ordinary circumstances, it's illogical and unreasonable for local authorities to discriminate against the use of this fuel in aircraft when an agency of the Federal Government has itself approved its use. But these are obviously not ordinary times.

It's particularly appalling when one considers that the aviation public could save approximately $300 million in fuel costs during the coming year by using this readily available fuel.

In an effort to quantify the magnititude of the current liability crisis on our EAA members, we have recently embarked upon a survey. The majority of the members who have answered the survey have experienced higher liability insurance premiums, increases of as much as 400 percent. Roughly three quarters of all EAA members responding to the survey are seriously concerned about product liability issues affecting sport and general aviation or perceive the problem as one of crisis proportions. They have also seen an increase in the fear of product liability exposure in their nonaviation-related businesses and employments.

EAA members agree overwhelmingly that the cost and availability of aviation-related liability insurance constitutes a problem. Members responding to the questionnaire generally feel that the legal system—the courts and juries and the insurance industry—are responsible for the crisis, and they are overwhelming in favor of EAA encouraging action on this issue.

The vast majority of our members, Mr. Chairman, do not build or restore aircraft. Those who can still afford it buy or rent new or used commercially manufactured airplanes. This committee is already well aware of the enormous product liability and the insurance problems that are facing general aviation manufacturers.

However, we hope that you will not view this as an isolated problem of a single small industry. The problems facing general aviation manufacturers today certainly have far-reaching implications for the future of aviation and the future of America. All of us are certainly paying more premium dollars for less insurance coverage, and the situation seems to get worse every day.

For instance, EAA is often seen as an organization which provides activities which are very important to aviation enthusiasts. It's an organization of action. Unfortunately, many, many of these activities and many, many of the chapters around the country have found that they can no longer afford the insurance premiums necessary to organize and carry out these activities with peace of mind.

It's essential that we solve this problem, however, without causing any more injustice. All parties must be treated fairly, and consumer rights are important. Everyone who has been injured due to negligence must be free to receive just compensation from the responsible parties.

In addressing this issue, we feel that we must not infringe upon the legitimate rights of consumers and producers. However, it's important that we bring some sanity and reason to this chaotic situation.

In closing, Mr. Chairman, I would like to quote a recent editorial written by our founder and president, Paul H. Poberezny. "Everything we in EAA think to do and say is tied to the philosophy of preserving and improving what we enjoy for future generations. My young granddaughters fly as if it were the most natural thing in the world. What a shame of they and others of their very young generation lose sight of how the freedom of flight was won for them."

Mr. Chairman, members of the committee, I thank you.

[The prepared statement of Mr. Ogrodzinski follows:]

STATEMENT OF

HENRY M. OGRODZINSKI, DIRECTOR OF CORPORATE COMMUNICATION

EXPERIMENTAL AIRCRAFT ASSOCIATION

Mr. Chairman and members of the Subcommittee;

I am Henry Ogrodzinski, Director of Corporate Communication for the Experimental Aircraft Association (EAA). On behalf of my fellow 100,000 EAA members, I would like to thank you for inviting us to testify about the impact of the current product liability situation on general and sport aviation consumers.

EAA is keenly aware of the current crisis in product liability and related issues. We are intensely interested in the search for solutions to this complex problem. In order to understand the nature of our concern, it is important to realize that our members are aviation enthusiasts from all walks of life who passionately love the freedom of personal flight. Although we are an international organization with over [illegible]00 "grass roots" chapters around the world, the majority of our members could easily be classified as an excellent cross section of America

As a consumer oriented organization, EAA has promoted safety and efficiency in aviation and the accessibility of aviation for all who choose to partake in it. To this end, EAA, which was founded 33 years ago by our President, Paul H. Poberezny, publishes four monthly magazines and one bi-monthly magazine, which cover the entire spectrum of the fastest growing segment of aviation...sport aviation. The non-profit EAA Aviation Foundation has constructed an extremely well regarded aviation museum in the city of Oshkosh, Wisconsin in conjunction with EAA's international headquarters. The Foundation also sponsors aviation research and development, the preservation of our precious aviation heritage and the encouragement of aviation education.

Since the 1985 EAA International Fly-In Convention and Sport Aviation Exhibition has already received a great deal of publicity, I will not dwell upon it. However, if I may, I would like to refresh the committee's memory on the statistics regarding the annual EAA convention. This year, well over 750,000 aviation enthusiasts from every state in the union and 66 different foreign countries attended the convention. Over 15,000 aircraft flew into the convention and accounted for over 64,000 landings and take offs...that's more than four times busier than Chicago O'Hare International Airport. In terms of aircraft, the 1985 EAA convention attracted everything from the world's smaliest twin engine homebuilt aircraft to the supersonic British Airways Concorde. Our distinguished visitors included Federal Aviation Administrator, Donald Engen, NASA astronauts, EAA member John Testrake, who captained the TWA hostage flight and thousands of other EAA members from widely diverse backgrounds. As usual, the purpose of the EAA convention was to provide the world focal point for the exchange of information and education in an appropriate setting during one of aviation's premiere events. The EAA Aviation Foundation sponsored over 500 forums, seminars and workshops on every aspect of aviation.

Our convention is one of the areas which has been affected by today's liability and insurance crisis. Although the EAA convention has had a very good safety record and is extremely efficiently organized, our insurance premiums for the eight day event were increased by some 300% in one year. In spite of this outrageous increase, we were forced to accept

$5 million less liability coverage than we previously enjoyed. We were told, quite frankly, by our insurers, that the premium increase had nothing whatever to do with the event itself...we were told that we were paying the price for unrestrained and unreasonable liability suits across the country. It was a "take it or leave it" situation. In the future, even that may not be available.

Insurance is rapidly becoming unavailable or unaffordable for many of us in aviation. If I may, I would like to sight some additional examples.

Many of our EAA members indulge in what some would call a unique hobby...they build their own airplanes and restore historic antique and classic aircraft. In fact, there are over 11,000 amateur-built, homebuilt, airplanes flying in the skies over America. In terms of safety, these handcrafted, privately owned, aircraft are on par with their commercially manufactured brethren. However, the homebuilts clearly reflect the cutting edge of aeronautical technology. Many of them are faster, more fuel efficient and have greater range than comparable commercially built aircraft. In fact, many of the innovations in aviation today have come from the amateur-built movement. It is our opinion that the major manufacturers have been unable to take advantage of recent technological breakthroughs for fear of product liability exposure. For that reason, utilization of emerging technology has been left to the American amateur aircraft builder.

It is a sad commentary on the state of the industry when one realizes that EAA members built more airplanes last year, in their back yards, basements and garages than all of the commercial airplane manufacturers put together.

Nevertheless, amateur aircraft builders are also facing their own insurance and liability woes.

The amateur-built aircraft movement was revolutionized by Burt Rutan, who designed canard-type aircraft made entirely of composite materials similar to fiberglass. In addition to these highly popular high-tech designs for the amateur aircraft builder, Burt Rutan has designed a jet trainer for the United States Air Force. He has also designed and built the "Voyager" which is the only airplane capable of flying around the world, non-stop, unrefueled. This epic making journey, which is scheduled for next year, will take 12 days in the air. Burt Rutan has also designed and built the beautiful new "Starship" which is being heralded by the Beechcraft Corporation as the beginning of a new era in aviation.

Unfortunately, Burt Rutan, who made his name in the amateur-built aircraft field, announced, recently, that he is leaving the homebuilt movement. He will no longer sell plans to amateur aircraft builders or license suppliers. He has taken these drastic steps in order to limit his exposure to unreasonable and unwarranted product liability suits.

Directly across the airfield from the EAA Aviation Center in Oshkosh, a young man named John Monnett has established a factory to produce aircraft kits. The high technology kits which he produces are of his own popular design. These airplanes have proven to be efficient to build, they fly well and they are quite attractive. Unfortunately, John Monnett was recently faced with a dilemma; either close the doors and shut down the factory or find a buyer for his business. He recently told me that the most important factor in his decision was the unaffordable product liability insurance premiums and the daily nagging fear that he and his family would be targets of an unwarranted and unreasonable liability suit. Mr. Chairman, John Monnett has sold this new high tech company. It is now a part of a British corporation.

Many of the high technology designers and builders of amateur-built aircraft are facing the same dilemma. One of the most respected manufacturers in the entire amatuer aircraft building movement is on the ropes. Although for business reasons, he has asked that I not identify him today, he has confided to us that the remaining months of 1985 will be a time of decision for him as well. He has told us that an indepth audit of his products and processess has revealed that 30% of the price of his aircraft kit is directly related to product liability insurance premiums. Mr. Chairman, that is 30¢ of every dollar the consumer spends on this particular aircraft kit. This manufacture expects $4 million in sales during the coming year. His insurance company is demanding a product liability insurance premium of $700,000. That is roughly two-and-a-half times his annual profit. By the way, that coverage is only for $5 million. Last year, the same manufacturer was able to obtain $25 million of coverage for a $167,000 premium.

Because liability insurance is so outrageously expensive, many of the manufacturers, designers and suppliers have either been forced out of business or they are forced to go naked into the jungle...without the comfort of the protection of liability insurance.

These hardships are not only borne by aircraft kit manufacturers and their consumers. Our non-profit Foundation sponsors a flying museum. It is made up of rare aircraft that are flown to festivals and airshows around the country. For many Americans, this is the only opportunity they will ever have to see and hear a part of our precious aviation heritage in the sky.

The EAA Foundation flying museum is made up of a number of aircraft including a B-17 Flying Fortress, a P-51 Mustang, a Ford Tri-Motor, a Spirit of St. Louis Replica and others. The B-17 is one of fewer than a half dozen still in flying condition. This World War II bomber is the subject of an exceedingly careful and diligent restoration and maintenance program. Recently, in the course of a recent inspection, some minor corrosion was found in the aircraft's enormous tail section. In order to rectify the problem, it was necessary to obtain several large sheets of aircraft quality aluminum. EAA's purchase order was rejected by a major aluminum supplier because it did not want to take the liability risk of having its product utilized in an aeronautical application. We were faced with the grounding of the airplane if we did not obtain the materials we needed. Eventually, we found other sources for the materials we needed. It is becoming increasingly common for material suppliers to say that they will sell aircraft builders anything they want...as long as they do not admit that the material will be used on an airplane. Otherwise, the supplier's insurance costs and his product liability exposure increases dramatically.

The EAA Aviation Foundation was honored to testify before members of this subcommittee in August of 1983. At that time, we discussed our extensive alternative fuels research and development program, which has resulted in federal approvals for the use of unleaded automobile fuel in airplanes designed to use 80 octane fuels. Since then, based upon our research and the engineering flight test data that we have gathered, the Federal Aviation Administration has approved the use of unleaded auto fuel in over 400 light aircraft models. This is important because 80 octane aviation gas is a fuel that is rapidly being phased out by major refiners. The only other alternative fuel, 100 low lead av gas, is harmful to the 80 octane engine. Also, and perhaps most importantly, auto fuel is on average roughly 60¢ less expensive per gallon. This means that pilots using auto fuel are able to fly more economically and more often, improving their proficiency and safety.

Today, over 21,000 airplanes have been issued Supplemental Type Certificates and are legally crossing this country, efficiently and economically, powered by automobile fuel. There is, however, one major problem.

Although there are over 6,000 public airports in this country, only 400 provide automobile fuel for their customers who are able to use it in their aircraft. Why? The answer is easy and apparent...the fear of product liability exposure.

In their fear of increased product liability exposure, the airplane engine and airframe manufacturers have refused to acknowledge the fact that unleaded car gas is a perfectly acceptable substitute for 80 octane av gas in an airplane designed to utilize 80 octane fuel...the same is true of many petroleum refiners. As a result, many airport managers and Fixed Base Operators are reluctant to provide auto fuel to their customers who are eligible to use it, for fear of increasing their liability exposure. In fact, the President of the National Aviation Transportation Association (NATA) told me recently that product liability was one of the major reasons why NATA's fixed base operators have failed to endorse the use of auto fuel.

Clearly, under ordinary circumstances, it is illogical and unreasonable for local authorities to discriminate against the use of auto fuel when an agency of the federal government itself has approved its use. But, these are not ordinary times...there is a giant abroad in our land has cast it's shadow of fear over all of us...a fear of product liability exposure, a fear of unreasonable and unwarranted liability suits, a fear of losing all that we and our families have achieved. This fear is accentuated by the fact that adequate protection in the form of insurance is either unobtainable or unaffordable.

In an effort to quantify the magnitude of the effect of the current liability crisis on our EAA members, we have embarked upon a survey of a statistically sound sample of EAA members. In the period of just over two weeks, we have already received over 25% of the returns. That tells us that this is an extremely important issue to our members. The data indicates:

* The majority of EAA members have experienced higher liability insurance premiums...increases of as much as 400%.

* Roughly 3/4 of all EAA members responding to the survey are seriously concerned about product liability issues affecting sport and general aviation or perceive the problem as one of crisis proportions.

* They have also seen an increase in the fear of product liability exposure in their non-aviation related business and employment.

- EAA members agree, overwhelmingly, that the cost and availability of aviation related liability insurance constitutes a problem.

- Members responding to the questionnaire generally feel that the legal system, courts and juries, and the insurance industry are responsible for the crisis and they are overwhelmingly in favor of EAA encouraging action on this issue.

Mr. Chairman and members of the committee, the vast majority of our EAA members do not build or restore aircraft. Those who can still afford it, buy or rent new and used commercially manufactured aircraft. This august committee is already well aware of the enormous product liability and attendant insurance problems that are facing the general aviation manufacturers. I beg you not to view this as the isolated problem of a single small industry. The problems facing the general aviation manufacturers today will have far reaching implications for the future of aviation in America. All of us are paying more premium dollars for less insurance coverage and the situation seems to get worse every day.

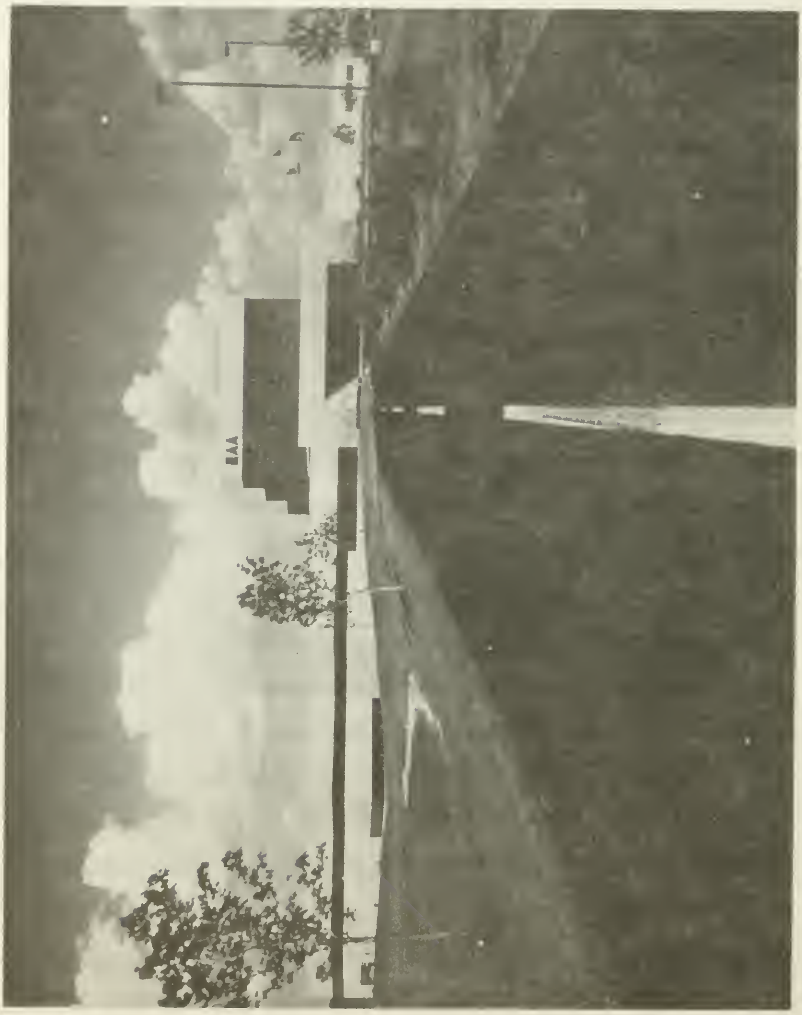
EAA is often seen as the organization which provides the activities which are important to aviation enthusiasts...an organization of action. However, many, many EAA chapters have found that they can no longer afford the insurance premiums necessary to organize and carry out these activities with peace of mind.

Although we are running out of time, there is still a chance to correct this situation. It is, frankly, too late to point fingers. There is enough blame to go around for everyone. The point is, we must solve this problem before it kills general and sport aviation and strangles the entrepreneurial spirits of Americans. Please don't delay.

It is essential that we solve this problem without causing any more injustice. All parties must be treated fairly. Consumer rights are important. Anyone who has been injured due to negligence must be free to receive just compensation from the responsible party. In addressing this issue, we must not infringe upon the legitimate rights of consumers or producers. However, it is imperative that we bring some sanity and reason to this chaotic situation.

In closing, I should like to quote a recent editorial written by our Founder and President, Paul H. Poberezny. "Everything we in EAA think, do and say, is tied to the philosophy of preserving and improving what we enjoy for future generations. My young granddaughters fly as if it were the most natural thing in the world. What a shame if they and others of their very young generation lose sight of how the freedom of flight was won for them."

Mr. Chairman, members of the committee, that concludes my prepared statement. At this time, on behalf of the Experimental Aircraft Association. I would like to thank you again for the opportunity of testifying before this body I would be happy to respond to your questions.



The EAA Aviation Center, in Oshkosh, Wisconsin, contains the international headquarters of EAA and the corporate offices of the non-profit EAA Aviation Foundation and the world class EAA air museum.

The VariEze is one of Burt Rutan's most popular designs for the amateur-built aircraft movement. Unfortunately, Rutan is leaving the amateur-built aircraft field due to product liability concerns.

The Sonerai is one of several aircraft designed by John Monnett for the amateur-built aircraft movement. Unfortunately, because of unaffordable product liability insurance premiums, John Monnett has been forced to sell his company to a British corporation.

Mr. BROWN. Gentlemen, we very much appreciate your testimony.

I'll be honest with you: As the newest member of this subcommittee, I was not even aware of the tremendous work that the Experimental Aircraft Association represents, and I'm going to scrutinize your material here very carefully in order to become better acquainted with it.

I'm also going to ask you to allow us to submit any committee questions in writing to you——

Mr. OGRODZINSKI. Absolutely, Mr. Chairman.

Mr. BROWN [continuing]. In view of the time.

We will look forward to discussing these problems with you.

Thank you very much.

Mr. YODICE. Thank you.

Mr. BROWN. The subcommittee will be adjourned.

[Whereupon, at 12:50 p.m., the subcommittee recessed to reconvene at the call of the Chair.]

APPENDIX

National Transportation Safety Board
Washington, D.C 20594

Office of the Chairman

November 27, 1985

Honorable George E. Brown, Jr.
Chairman, Subcommittee on Transportation,
  Aviation and Materials
Committee on Science and Technology
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

It has come to my attention that during your Subcommittee's October 22, 1985 hearing on "Aviation Product Liability: The Effect on Technology Applications," one witness criticized the Safety Board's policies pertaining to our investigations of aircraft accidents. I understand the Safety Board was not invited to testify at the hearing because our investigations were not a subject of the hearing. However, since the Board's policies were interjected into the hearing by Mr. John V. Brennan, President of United States Aviation Underwriters (USAU), I believe it would be helpful for your Subcommittee to have an understanding of those policies and their legislative roots. I also respectfully request that this letter be made a part of the hearing record.

The Board is required by law to investigate all civil aircraft accidents and to determine and publicly report the facts, conditions, circumstances and probable causes of such accidents. It is not the purpose of our accident investigations to determine the rights or liabilities of anyone, and we make no attempt to do so. One of the principal missions of the Board, and a vital byproduct of its investigations, is the issuance of safety recommendations which are designed to prevent accidents and to avoid or at least minimize injuries.

The sole statutory condition with respect to outside parties is the requirement that the Federal Aviation Administration (FAA) be allowed appropriation participation in the aircraft accident investigations conducted by the Board (49 U.S.C. Sec. 1441 (g)). No other person or organization has any right to participate in these investigations.

The criteria which govern the designation of parties to the investigation are spelled out in the Board's published rules. In order to be considered, an entity must have employees, functions, activities or products that were involved in the accident and must be able to provide suitable qualified technical personnel to actively assist in the investigation (49 C.F.R. Sec. 831.9(a)).

We recognize that aircraft accidents are likely to lead to civil litigation. Thus, in an effort to insulate the Board's accident investigation from the adversarial nature of that litigation, the Board prohibits designated parties from being represented by persons who represent claimants or insurers (49 C.F.R. Sec. 831.9(c)). This prohibition is based in part on the statutory provisions precluding the use or admission of Board reports in actions for damages (49 U.S.C. Sec. 1441(e) and 1903(c)) and effectuates the historical desire of the Congress to keep the Board free from the entanglement of lawsuits arising from transportation accidents.

I am proud of the fact that since I have become Chairman of the Safety Board we have been taking a closer look at participation in our aircraft accident investigations. We have tightened our policies, where appropriate, to enforce the letter and to promote the spirit of our rules.

For example, we became aware in 1983 that an attorney signed an affidavit on behalf of a representative of a party to a Safety Board investigation claiming that the representative had been employed by a law firm solely for consultation in anticipation of litigation. This claim was aimed at shielding the party representative and a report prepared by him from discovery. As a result of this abuse of our process, representatives of parties to our aircraft accident investigations (except the FAA) are now required, as a prerequisite to participation, to certify formally that they are not participating on behalf of claimants or insurers or for the purpose of preparing for litigation. This written certification should serve to vitiate any subsequent claim of a litigation privilege by party representatives or their principals stemming from their participation in our investigations.

In 1984, the Piper Aircraft Corporation (Piper), one of USAU's new clients, advised the Board that it would commence using Aerospace Management Services International (AMSI), a wholly owned subsidiary of USAU, to represent it in those cases where the Board invites Piper to participate in the investigation. Before granting Piper's request to use AMSI, the Board insisted on being satisfied that AMSI would be representing Piper and not an insurer. Accordingly, the Board asked Piper for all its records relating or referring to AMSI. Fifty-nine days later, Piper asserted that it had no such records. The Board then advised Piper that AMSI would not be authorized to represent it, and the Board sought detailed information from Piper regarding its relationship with AMSI. AMSI filed suit in an unsuccessful attempt to block the Board's actions.

The information Piper ultimately produced revealed that USAU required Piper, as a condition of insurance, to retain accident investigators who were independent of Piper, and thus AMSI was retained to fulfill this condition of Piper's product liability insurance. In addition, AMSI's fees were treated as ordinary insurance expenses and were applied against the insurance deductible.

Based on these disclosures, the Board denied Piper's request to be permitted to be represented by AMSI, as AMSI was representing an insurer in connection with its representation of Piper in violation of 49 C.F.R. Sec. 831.9(c). Neither Piper nor USAU nor AMSI sought review of this determination. The Board also proposed a civil penalty against Piper which Piper initially agreed to settle but has now decided to contest. We are referring the civil penalty to the Department of Justice for appropriate action.

The Board also directed that participants in accident investigations, including certain manufacturers of aircraft equipment which had been using AMSI, were barred from being represented by AMSI in Board investigations. AMSI again unsuccessfully sought to block this action. It is significant to note that not a single client of AMSI has challenged the Board's decision to prohibit AMSI from representing manufacturers.

I have been advised that none of the other witnesses at your October 22 hearing shared Mr. Brennan's opinion that the Board's accident investigation policies were contributing to the product liability problems facing the manufacturers. In any event, the Congress did not create the Board to resolve or facilitate the disposition of product liability disputes. On the contrary, Congress deliberately sought to insulate the Board from the cross currents of such disputes. We have not, do not, and will not conduct investigations to satisfy interests beyond those envisioned by Congress, and we will not tolerate abuses of our investigative process. I would also emphasize that all of the Board's actions in the AMSI/Piper matter were approved unanimously by the Board Members.

Thank you for allowing the opportunity to present this information. If you wish, we would be happy to furnish your Subcommittee with the public docket pertaining to the proposed civil penalty against Piper as well as the associated suits AMSI instituted against the Board.

Respectfully yours,

Jim Burnett

Jim Burnett
Chairman

cc: Mr. John V. Brennan

NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.

1200 Eighteenth Street NW
Washington, DC 20036
Telephone: (202) 783-9000
Telex. 904-186

October 24, 1985

Mr. George E. Brown, Jr.
Chairman
Subcommittee on Transportation,
Aviation and Materials
U.S. House of Representatives
Committee on Science and Technology
Suite 2321, Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of September 26, inviting this association to appear before the Subcommittee.

While the primary concerns of the National Business Aircraft Association do not involve activities central to design, development and manufacture of aircraft, we are nevertheless deeply interested in rising costs and other aspects of product liability in the aviation community. Accordingly we ask that these comments be entered into the record of the October 22, 1985, hearing of your Subcommittee on the subject.

Our association's principal purpose is representation and promotion of the interests of companies which own and operate business aircraft as an aid to the conduct of their business. Our membership currently consists of about 2,965 companies which operate 5,547 aircraft. These range from single-engine piston types to helicopters and to intercontinental-range business jet aircraft.

Promotion of use of business aircraft, along with protection of the interests of owners of such aircraft, has inclined us to become deeply interested in the product liability "crisis" which has driven up the cost of aircraft and has left without certain answer many fundamental questions as to where liability begins, with whom it resides, to whom it extends and how far it may range in terms of time or of limits on monetary awards.

It is the responsibility of this association to insure that owners and operators of aircraft will be able to deal confidently with manufacturers and furnishers of service, in the knowledge that what they purchase is properly designed, safely constructed and backed by honorable warranty. In the unlikely event that products or services purchased by business aircraft operators are defective or inherently unsafe, adequate recourse must exist for the fair adjudication of complaints, repair of defects, and, in cases where gross fault appears to exist, for establishment of responsibility and for restitution or award for damages, loss of life or suffering.

Our Board of Directors has, at the same time, recognized that excesses have been permitted to creep into the system of adjudicating product liability claims and it is obvious to this association that a reasonable set of parameters should be set, within which claims and defense of product liability allegations can operate. Among factors which might be considered in establishing fair parameters would be (1) number of years during which the product has been in use (2) number of owners of the product over a given period of time (3) number and complexity of fundamental alterations made to the product by its owner(s) and (4) extent to which the owner(s) has complied fully with all airworthiness directives or other guidance given by the manufacturer for improvement or correction of the product or its operation.

NBAA is aware that the costs of obtaining product liability insurance by manufacturers of aircraft have increased dramatically during recent years and that these costs, in turn, have produced substantial increases in the sales price of aircraft. It is our further understanding that the burden of shifting product liability costs from manufacturer to purchaser has fallen heaviest on those with the best safety record and who buy the more sophisticated aircraft, a phenomenon which seems unfair. There is no question in our minds that the spectre of ever increasing product liability costs acts as a deterrent to innovation among manufacturers; this, in the long run, will result in stagnation and failure to offer improved, more efficient aircraft at prices which prospective purchasers are willing to pay.

NBAA finds itself in an unusual position with respect to product liability concerns in the aircraft manufacturing industry; it is not often in this litigious world that a consumer group, which NBAA's member companies are in this case, takes a position which is empathetic to that of manufacturers.

But we feel that such a position is responsible in this matter, and we hope that NBAA can play a constructive role in resolving the very vexing problem of aircraft product liability.

Sincerely,

John H. Winant
President

JHW/jp

Air Transport Association OF AMERICA

1709 New York Avenue, N.W
Washington, D.C. 20006
(202) 626-4114

WILLIAM J BURHOP
Senior Vice President
Government Affairs

November 1, 1985

The Honorable George E. Brown, Jr.
Chairman
Transportation, Aviation and
Materials Subcommittee
House Committee on Science and
Technology
2324 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In conjunction with Subcommittee hearings held on October 22, 1985 concerning Product Liability, the Air Transport Association respectfully requests that the attached statement be included as part of the hearing record on this matter.

Thank you for your consideration.

Sincerely,

William J. Burhop

WJB/gbw

Enclosure

0550D

STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AVIATION AND MATERIALS

COMMITTEE ON SCIENCE AND TECHNOLOGY

U.S. HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1985

Statement of the Air Transport
Association of America
Before the Subcommittee on Transportation
Aviation and Materials
Committee on Science and Technology
U.S. House of Representatives
November 1, 1985

The Air Transport Association of America, whose members generate about 90 percent of the revenue passenger miles flown by the U.S. airline industry, and nearly all of its cargo service, appreciates this opportunity to offer views on the subject of product liability. The subcommittee's exploration of this subject area is both timely and essential for the continued growth and viability of the nation's air transport system.

The trends and concerns which we will set forth in this statement are not unique to the airline industry--they are being discussed with urgency by corporate boards, small business managements, professional groups, and in the halls of government at all levels. Therefore, while our data will reflect the growing insurance problems for the airline industry, the problems are broad and general in nature and, as evidenced by the current extensive media coverage, touch all segments of our society--not only the business and professional community, but municipalities and the general public as well. The crisis which has already terminated the production of some vitally important vaccines, has also threatened widespread closing of day-care centers in some states and the abandonment of some locales by medical specialists.

What are the problems? At the threshold, the whole insurance market has gone sour, with a particular loss of reinsurance capability. Consequently, the insurance market has become unwilling to cover certain risks at the levels required. An example of this limited capacity for certain risks is the situation with regard to directors' and officers' insurance, where costs have commonly doubled and tripled for the business involved, while the limits available at the time of policy renewal are 1/4 and 1/3 of the expiring coverage. Upon renewal, policies are being written with new exclusions, limitations and conditions. Thus, for example, sudden and accidental pollution which was previously covered without qualification, must now be the result of a specific occurrence. Indeed, the airline industry is finding that there is no coverage available for certain risks. A dramatic example of this is the treatment of environmental impairment liability, covering seepage from leaking underground storage tanks, an area in which insurance previously protected airlines in their storage of jet fuel. Suddenly, in 1985, no coverage could be found in the traditional insurance market.

Most importantly, as demonstrated by the three attached charts, the airline industry is experiencing dramatic increases in its insurance costs. Thus, the airlines which collectively account for 97.4 percent of the commercial air carrier operations in this country, the so-called "majors" and "nationals", have seen their insurance costs rise 20 percent between 1983 and 1984 (Chart 1). The hull insurance element of this total rose from $79 million in 1983 to $90 million in 1984, while the passenger liability insurance element rose even more dramatically in that time period, from $53 million to $69 million. Charts 2 and 3 portray the ominous trend even more dramatically. The data used to establish these trend lines are taken from the carrier reports to the Department of Transportation for the first quarter of each of the five years depicted.[*/] In the case of hull insurance costs (Chart 2), the rate, which slowly drifted downward from a level of 30.8 cents per $100 of net book value in the first quarter of 1981 to 28.6 cents in the first quarter of 1984, soared to 40.1 cents per $100 of net book value in the first quarter of 1985. A similar trend is reflected by experienced passenger liability insurance costs (Chart 3). In this category, the cost as expressed in cents per 1000 revenue passenger miles was 17.1 cents in the first quarter of 1981, 18.5 cents in 1982, and 18.9 cents in 1983, 17.7 cents in 1984, and suddenly rose to 30.2 cents in the first quarter of 1985.

[*/] The first quarter represents the only period in a calendar year when no airline insurance contract is renewed. Since these contracts are renewed annually during the remaining nine months of the year, the first quarter reflects the rates agreed upon in the course of the renewal negotiations of all carriers during the previous year.

In considering these three charts, one must bear in mind that none of them reflect the tragic experience of the world's commercial airlines thus far in 1985. Thus, while these airlines collectively suffered $2.5 billion in hull losses during the ten-year period from 1975 thru 1984, they experienced about $.5 billion in hull losses in the first nine months of 1985 alone. Similarly, while there were but two fatalities in commercial airline accidents in 1984, there have been about 1500 deaths during the first nine months of 1985.

The question naturally arises: Why are airline insurance premiums skyrocketing? There are, in our view, several reasons. First, the insurance industry's underwriting losses were previously outweighed by their investment profits. Therefore, it is asserted, underwriters previously kept some bad risks on their books. However, with declining interest rates and the consequent dampening of investment profits, the underwriters are no longer willing to take such losses. Secondly, and most importantly, the tort system in this country today produces extremely high awards and settlements for the claimants, extremely protracted and expensive litigation, and a constant incentive to seek new, imaginative grounds for damages. With regard to passenger fatality settlements for airline accidents, the average level in this country is five times higher than it was ten years ago. Moreover, the average is currently about 14 times higher in this country than the average in the rest of the world.

The airline industry is actively exploring every possible remedy or amelioration of this situation. New participants and markets are being sought, but aggressive efforts have indicated that this avenue offers very limited hope at this point in time. Some airlines are accepting increased deductibles in their contract renewals. Some of these deductibles are effectively forced upon them while others are voluntary, but the net result is an estimated doubling of the deductibles in the current round of contract renewals. Airlines are also reducing the insured value of their fleets in order to reduce the insurance costs to a palatable level. Thus, the trend through the years has been for airlines to abandon insuring their fleets at replacement value and move to a market value level. Now, the trend is increasingly toward insuring the fleets at a level not too much higher than the current book value.

The industry is also examining a variety of alternatives to traditional markets for certain risks. For example, industry cooperatives similar to those being funded by municipalities for self-insurance pools, are being explored. Captive insurance companies are being seriously considered for such risks as environmental impairment liability. And, the world's airlines collectively are looking at the possibility of activating a captive company for coverage of some share of their hull and passenger liability exposure.

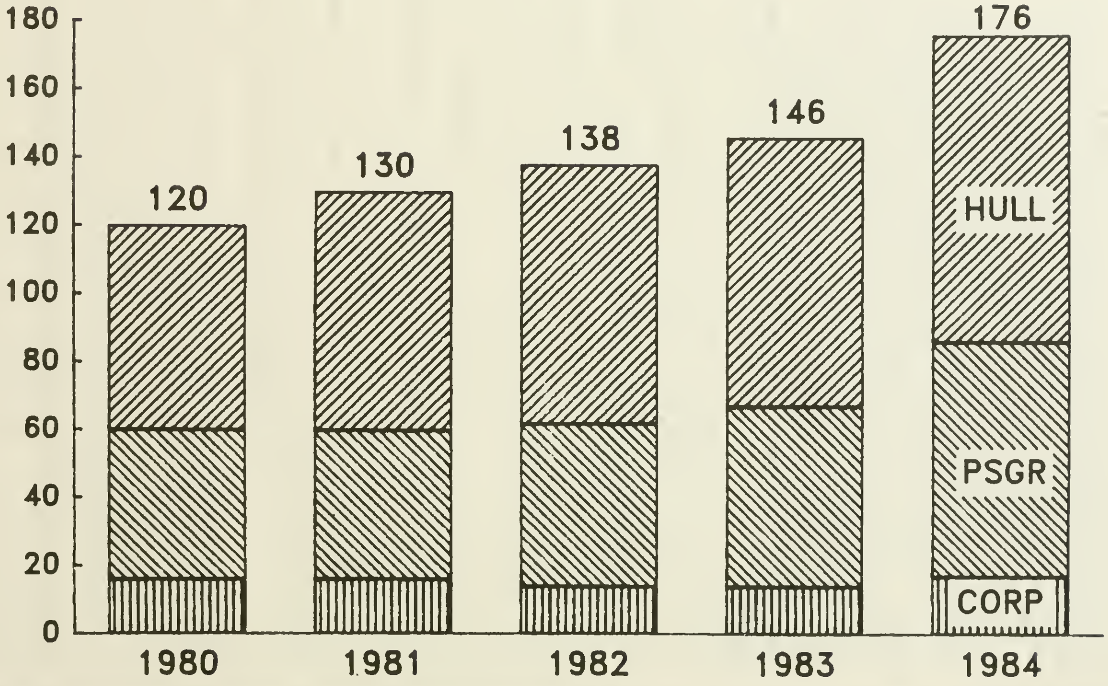
Claimants are being informed increasingly of the high cost of the current system in which, for example, it has been found that 39 cents out of every dollar spent in asbestos litigation goes to the claimants, while 61 cents goes to lawyer fees and other legal costs. Similarly, less than half of the money spent in Dalkan shield cases is going to the claimaints. In the case of aviation accident litigation, the Institute for Civil Justice of the Rand Corporation now has a study underway to determine the costs, in time and dollars, of the current system of compensation through litigation. It is understood that the results of this study will be made public next Spring.

In addition, the airline industry supports the introduction of domestic and international no-fault liability regimes. This can be achieved domestically through enactment of legislation which we understand will be introduced in the next session of Congress. Internationally, it can be achieved through ratification of the Montreal Protocols amending the Warsaw Convention, together with implementation of a supplemental compensation plan providing unlimited economic damages for U.S. citizens and others purchasing their international tickets in this country. We expect that step to be pursued by the Administration next year, in keeping with similar action being taken by responsible governments worldwide.

The airline industry is convinced that, if these and other legislative reforms are not achieved in timely fashion, the trends protrayed in our attached charts will accelerate, aircraft and engine manufacturers will be inhibited from producing new products, airline and general aviation consumers will be inhibited from purchasing new products, and the cost of air transportation to passengers and shippers alike will rise.

We, therefore, look forward to working with this subcommittee and others in the Congress in developing legislative and treaty reforms necessary to avert the impending crisis. The airline industry applauds the leadership exhibited by the Subcommittee in calling for the current exploration of the facts and the consequences of this trend, which is impacting businesses, industries and professions throughout the country.

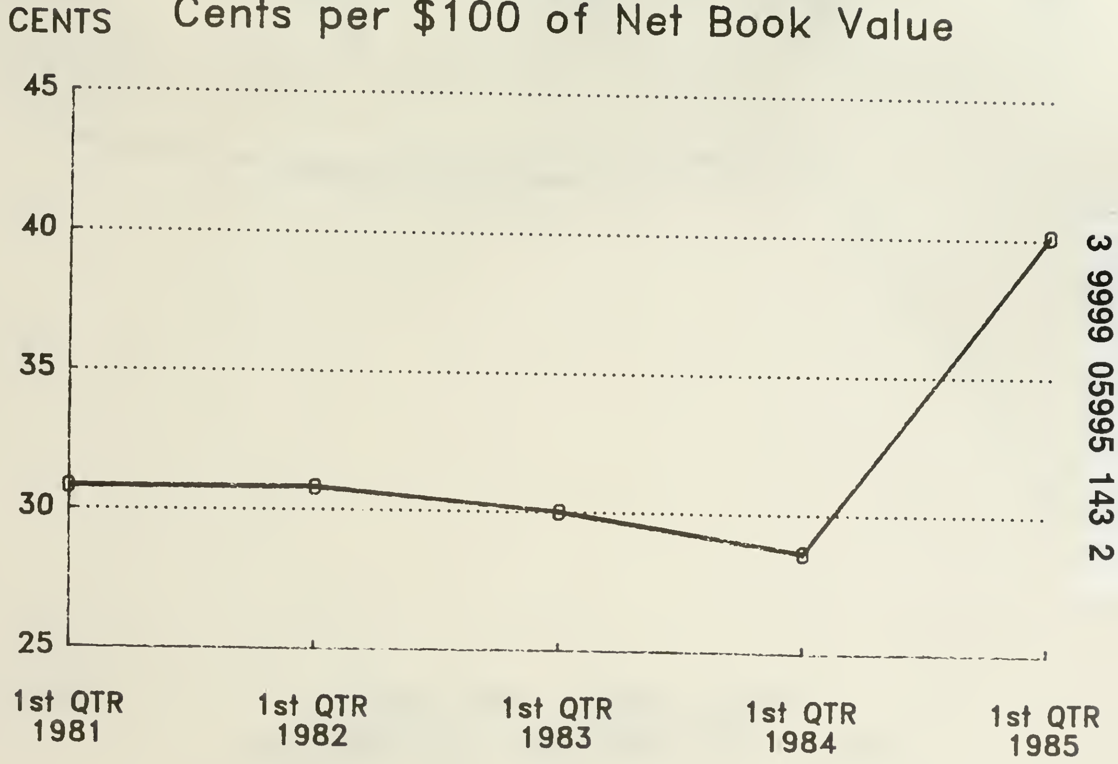
Chart 1



TOTAL AIRLINE INSURANCE COST
1980 – 1984
$ Millions

Chart 2

HULL INSURANCE COST
Cents per $100 of Net Book Value



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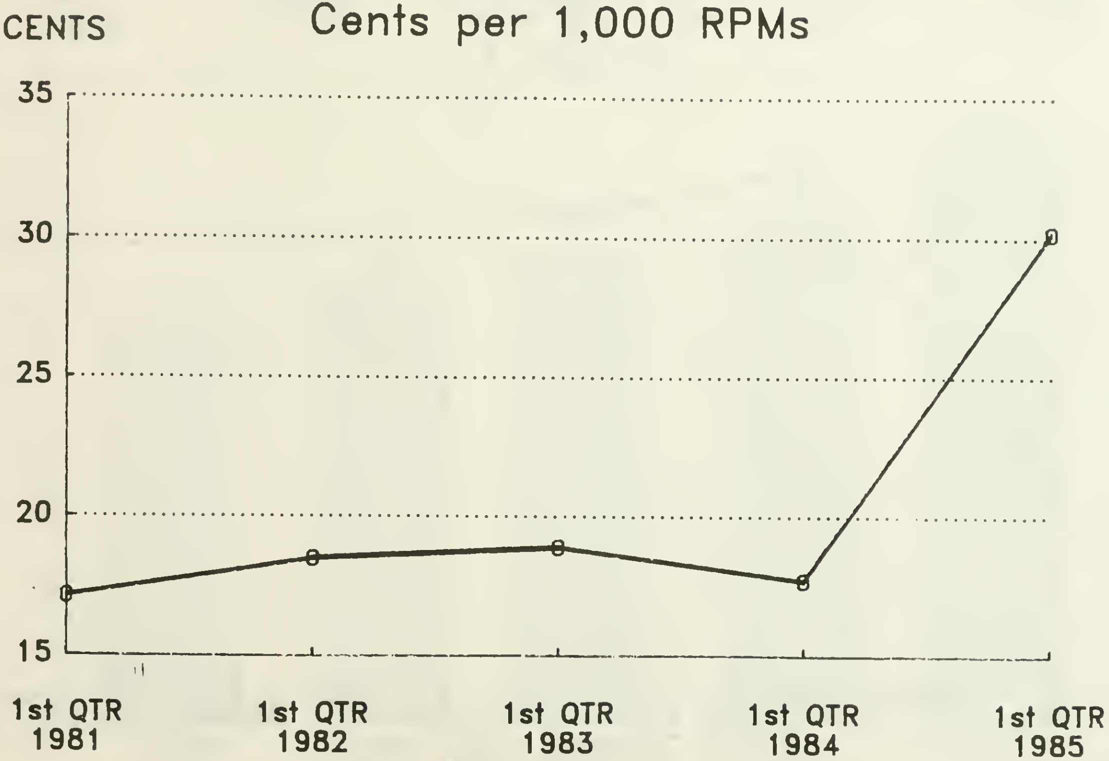
PASSENGER INSURANCE COST
Cents per 1,000 RPMs



PASSENGER INSURANCE COST
Cents per 1,000 RPMs